Commission on Taxation & Welfare
An Coimisiún um Chánachas ⁊ Leas

Briefing Paper

Capital taxes

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Key points

- The Commission has agreed that there is a need to reform existing taxes on capital as part of a balanced approach to revenue raising.
- Capital Acquisitions Tax (CAT) arises on the passing of wealth occurring on the occasion of a lifetime transfer (gift) or transfer on death (inheritance). It is generally charged on the market value of the assets transferring less costs and liabilities.
- Capital Gains Tax (CGT) arises on the lifetime disposal or deemed disposal of certain assets. It is generally charged on uplift in value of the asset from the time of acquisition to the time of disposal, subject to costs and certain enhancement expenditure.
- Death is not a disposal for CGT purposes – as such, there is no CGT on death. CAT applies to the beneficiaries, not the disponer (the person providing the inheritance).
- Although liabilities to each may be triggered by the same event, the formal incidence of CAT and CGT is on separate individuals and the two taxes serve distinct purposes – a tax on increases in the value of capital and a tax on transfers of wealth. This distinction may be affected if CGT was to apply in death cases.
- The OECD recommends a tax on lifetime wealth transfers as the fairest and most equitable means of taxing gifts and inheritances.
- Additional information on the potential base, and therefore potential yield, will be forwarded to the Commission when available.

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1. Introduction

This paper follows on from the consideration of a new tax on net wealth (Meeting 16 – accompanying paper '*Taxes on wealth*'). At that meeting the Commission considered the public policy arguments for taxing the stock of net wealth (as distinct from flows). They also considered the extent to which taxation policy should facilitate the intergenerational transmission of wealth noting that taxes on wealth transfers have their basis in limiting the concentration of wealth, and its transmission across generations, and promoting equality of opportunity.

Members expressed an interest in exploring further the potential to raise additional revenue from wealth through existing taxes – namely Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT), particularly in the context of death. Accordingly, this paper probes further the taxation of increases in the value of an asset, which are realised on death, and the taxation of transfers of wealth to beneficiaries subsequent to death.

This paper does not prejudge any decision the Commission on Tax and Welfare (the Commission) may make on increased alignment of the treatment of capital gains with income. Accordingly, any comments regarding options for reform are largely based on amendments to the existing CGT and CAT regimes. If the Commission decides to move towards increased alignment, any options for reform need to be reassessed in that light.

The taxation of returns to capital – through CGT – was outlined in the paper entitled *'Horizontal equity in the taxation of income and capital'* (Meeting 12). As well as setting out relevant reliefs and exemptions, the paper outlined how CGT arises on a realisation basis – noting that this may, in practice, encourage the holding of assets until death to avoid the realisation of a taxable chargeable gain (a *lock-in effect*). The taxation of gifts and inheritances, and the relevant reliefs and exemptions to CAT, have also been outlined in a number of previous papers.[1] For ease of reference, the calculation rules and relevant reliefs and exemptions are outlined once again below.

In discussing taxes that arise as a result of death, a distinction can be made between inheritances taxes and estate taxes:

- *Inheritance taxes* are those charged on value of the share of assets received by individual beneficiaries where the transfer of those assets occurs on death. In an Irish context CAT is an example of an inheritance tax.

[1] Meeting 2, '*Outline of Main Tax Heads and Changes since 2009*', Meeting 4, '*Supporting SMEs and Entrepreneurship*', Meeting 13, '*Pension Tax Expenditures*', Meeting 12, '*Horizontal equity in the taxation of income and capital*'.

- *Estate taxes* refer to those charged on the value of the total estate. The obligations relating to calculation and payment of this tax are usually managed by the personal representatives of the deceased as part of the duties relating to the distribution of the estate.

To draw in ongoing discussions on incidence, the formal incidence of an estate tax is on the assets left behind after the death of the disponer; the formal incidence of an inheritance tax is on the beneficiaries. In contrasting these approaches, the paper surveys international experience of estate taxes and inheritance taxes and recent OECD proposals for reform.

Previous papers have outlined the intergenerational considerations in respect of capital gains and inheritance and the argument for taxing inheritance from a meritocratic perspective. They have also noted the sharp decrease in home ownership rates among recent generations: the proportion of people born in each decade since the 1960s who own the home they live in, by a certain age, is decreasing. This is partly due to the distribution of wealth, including housing assets, and increases in asset prices. Inheritance plays a part too – the positive development of increasing life expectancy interacts with children being born to older parents, meaning inheritance is being received by adults later in life.[2] Lower fertility rates and smaller families will also contribute to greater concentration (assuming fewer close family members means heirs receive a larger share of wealth through inheritance). For this reason, Ireland's demographic profile over coming decades will shape the scope for taxation of inheritance.

Earlier papers also outlined various measures of income inequality and contrasted measures at a point in time with lifetime measures. Point in time levels of inequality may differ from levels of the inequality persistence over generations. The taxation and welfare systems may have greater scope to affect the latter through levers such as CAT.

The purpose of this paper is to allow the Commission to reconsider, in a focused manner, potential reforms to both CGT and CAT – including the possible introduction of an additional charge on death in the form of CGT or an estate tax.

[2] In 1990, period life expectancy at birth was 72.3 years for men and 77.9 years for women; by 2016, this had increased to 79.6 years for men and 83.4 for women. Over the same period, the median age of mothers at the birth of their first child increased from 26.3 to 30.9 years. See CSO: Irish Life Tables, Table no. 17: 2015-2017 and CSO: Women and Men in Ireland 2019.

2. Capital Gains Tax and Capital Acquisitions Tax

2.1. Capital Gains Tax - recap

As noted in the paper '*Horizontal equity in the taxation of income and capital*' (Meeting 12), CGT applies to the nominal appreciation in value between the price that was originally paid for an asset and the price at which it was disposed of. It applies to chargeable gains incurred on or after 6 April 1974.

In calculating the increase in value that is chargeable to CGT (i.e. the chargeable gain), allowance is also made for enhancement expenditure where relevant, and certain costs of acquisition and disposal (such as legal fees). If an asset has fallen in value at the time of disposal, the loss arising can be offset against other capital gains made in the same year or future years.

Although the meaning of disposal is broadly defined for CGT purposes, certain events are deemed not to be disposals for CGT purposes.[3] One such example is the transfer of assets on death - the transfer of an estate to a personal representative as part of the administration process is not regarded as a disposal for CGT purposes.[4] Individuals and companies are subject to CGT (although the majority of receipts are from individuals). Any proposed changes should be considered in the context of potential implications for both.[5]

From a distributional perspective, CGT receipts from the realisation of increases in asset values are heavily concentrated in the top income decile. The top income decile accounts for 41 per cent of transactions liable to CGT, and 74 per cent of CGT receipts by value. Furthermore, the single asset class representing more household gross wealth than any other – the principal private residence – is exempt from CGT.[6] Incidentally, the impact of this is entirely absent from traditional survey-based measures of the distribution of income, which is the main source of metrics on inequality. The discussion on how comparable capital gains and income are is ongoing within a Commission subgroup – the relevance to the interaction between income and CGT here is the extent to which returns to labour are channelled as capital gains rather than earnings.

[3] Although often viewed as the simple sale of assets, a disposal for CGT purposes can include the scrapping of assets or not enforcing a right in such a way that those rights can transfer to another person (e.g. squatters rights)

[4] However personal representatives are chargeable on any gains made on sales of assets during the course of their administration

[5] Capital gains are included in a company's profits for corporation tax purposes, but subject to the same CGT rate as individuals. Companies only pay CGT on development land.

[6] CSO, Household Finance and Consumption Survey, Figure 5.6

In addition to the Principal Private Residence (PPR) relief noted above, and as has been noted previously (Meetings 2, 4 and 12[7]), there are a number of exemptions and reliefs that have been introduced into CGT legislation over time. The key exemptions and reliefs are listed below again for ease of reference:

- *Retirement relief:* Provides for an exemption or reduction in CGT on disposal of certain business or farming assets by individuals aged 55 or older.
- *Entrepreneur relief*: Provides for a 10% rate of CGT on the disposal of certain business assets
- *Transfer of business relief:* Provides for a deferral of gains arising on the incorporation of a business
- *Disposal of site to child:* Exemption available on the disposal of land of up to one acre (4,046m^2) to their child to allow them to build a principal private residence.
- *Farm restructuring relief*: Provides for relief on disposal or exchange of farmland to consolidate existing farmland holdings
- *Transfers of assets between spouses or civil partners*: No CGT gain or loss arises on the transfer of assets between spouses or civil partners.
- *Annual personal exemption:* Irish chargeable gains of €1,270 in any calendar year are exempt.
- *Indexation relief:* Provides for relief from the effects of inflation when calculating chargeable gains

The qualifying conditions for these exemptions and reliefs are set out in more detail in Appendix 1. The appendix also contains a brief recap on roll-over relief, which allowed for the deferral of chargeable gains arising on certain qualifying assets, and was withdrawn in 2002.

2.2. Capital Acquisitions Tax - recap

Capital Acquisitions Tax (CAT) is a tax levied on the acquisition of a gift or inheritance. It is charged on the taxable value of the gift or inheritance – which is the market value of the asset less any relevant costs or expenses incurred by the recipient, as well as any consideration paid. It applies from 6 April 1974 in respect of certain gifts and 6 April 1975 in respect of inheritances.

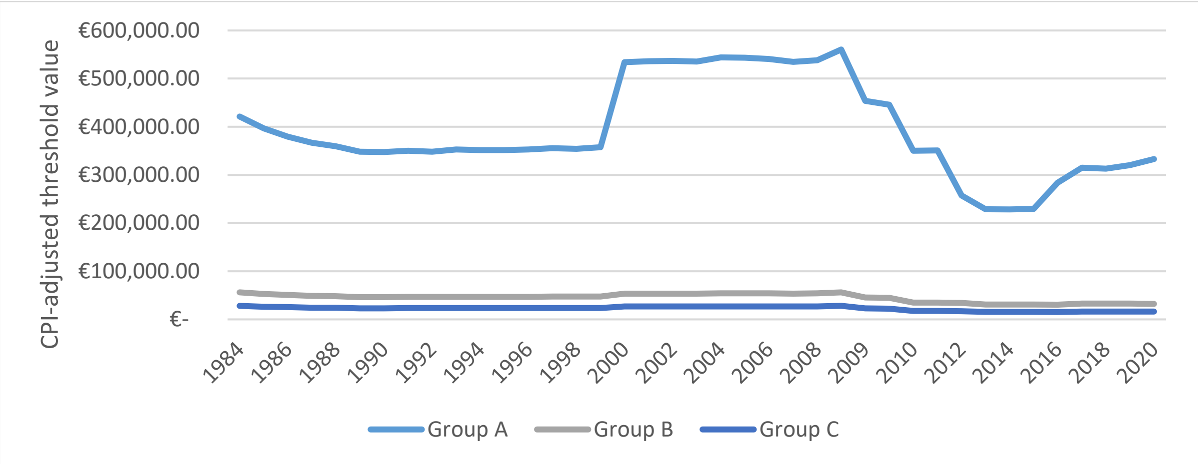
[7] Meeting 2, '*Outline of Main Tax Heads and Changes since 2009*', Meeting 4, '*Supporting SMEs and Entrepreneurship*', Meeting 12, '*Horizontal equity in the taxation of income and capital*'.

The large majority of CAT comes from inheritance tax, with much smaller proportions from gift tax[8] (and discretionary trust tax[9]). The rate is 33 per cent, which applies to taxable amounts in excess of the relevant group threshold[10]. From 1974 to 1999, CAT employed a system of progressive rates (in addition to relationship thresholds), which was wound down over time[11].

The distributional impact of having received an inheritance is significant, as is the variation in asset types that households report receiving as inheritance. Some 40 per cent of households in the top wealth decile report having received an inheritance of a business (including farms) whereas none of the lowest wealth decile have received an inheritance of a business or farm.[1] Inheriting a business (including farms) moves the household up in the wealth distribution, by almost 26 percentiles, relative to what would be expected on the basis of household income. It is these particularly influential transfers that are subject to the significant reliefs noted previously and below.

A notable feature of the tax is the level of the thresholds and how they differ depending on the relationship between the disponer and beneficiary. Figure 1 below illustrates the level of the threshold for each group over recent decades (See Appendix 3 for further detailson how relationship relief evolved over time).

Figure 1: Historical CAT groups, group thresholds and rates, adjusted to January 2020 values



Source: Revenue: Capital Acquisition Tax historical thresholds, adjusted to January 2020 values using CSO CPI Inflation Calculator tool
Note: Where thresholds were in place across multiple years, prices for each relevant year are listed above, uprated to January 2020 prices).

[8] Gift taxes are often used internationally as a supplement to inheritance taxes to minimise the opportunity to use lifetime transfers to avoid taxation of inheritance.
[9] Discretionary Trust Tax is a tax on trusts where there is no immediate benefit to the beneficiary. The trustees manage and distribute the assets in the trust subject to the powers conferred by the deed or will.
[10] As noted previously, the amount of CAT payable is dependent on the relationship between the person giving the gift or inheritance (the disponer) and the recipient (the beneficiary). These relationships are grouped for CAT purposes with different cumulative tax free thresholds (group thresholds) applying to each. CAT is generally chargeable on the amount exceeding the threshold over a person's lifetime. Details of the evolution of relationship thresholds are set out in Appendix 3.
[11] Historic rates - Old Revenue website

In addition to relief from payment of CAT provided by the thresholds, some other key exemptions and reliefs include:

- *Small gift exemption*: A small gift exemption of €3,000 per disponer in a calendar year.
- *Dwelling house relief*: Provides for an exemption on the gift or inheritance of a dwelling house (including gardens of up to one acre, or 4,046m^2) where certain conditions are met.
- *Agricultural relief*: - Provides for a reduction in the market value of certain agricultural assets by 90 per cent provided certain criteria are met.
- *Business relief*: Provides for a reduction in the taxable value of certain business assets by 90 per cent provided certain conditions are met.

The qualifying conditions these key exemptions and reliefs are set out in Appendix 2.

2.3. Interaction of CGT and CAT and impact of reliefs

CGT and CAT were introduced as a three-tax package[12] on capital and wealth in the mid-70s - which aimed to tax capital and wealth in a more equitable and broad-based manner than was previously provided for by so-called *death duties* (being estate duty, legacy duty and succession duty). Under the previous system, capital gains were generally untaxed and estate duty (which accounted for approximately 90 per cent of the yield from death duties[13]) could generally be avoided through the making of gifts prior to death.

Although these taxes significantly broadened the capital tax base, the two taxes were also designed to allow individuals a degree of protection from taxes arising on certain intergenerational wealth transfers - this can be clearly observed by examining the manner in which:

- CGT retirement relief interacted with CAT agricultural relief and CAT relationship reliefs to minimise the tax due on intergenerational wealth transfers relating to family businesses and farms, and
- CGT principal private residence relief interacted with the CAT relationship reliefs to minimise the tax due on intergenerational wealth transfers relating to family homes

since the inception of the two charges in the 70s.

[12] A recurrent wealth tax was also introduced, but this was abolished in the late 1970s
[13] Source White Paper on Capital Taxes 1974

However, the level of protection offered by CAT and CGT[14] reliefs has increased over time, with exemptions for agriculture and business[15] in particular expanding significantly in this period. Relationship reliefs also evolved from a special rate and band system to the tax free thresholds seen today and a full spousal exemptions were introduced in respect of gifts and inheritances[16].

Considering the range of and level exemptions available, it is possible for certain assets to pass untaxed through lifetimes and across generations. The interaction of such reliefs, in conjunction with other parts of the tax code, can allow for the passive accumulation of wealth. This is demonstrated in Example 4 below. This is particularly of concern as housing assets represent such a large proportion of household wealth and principal private residences, which are generally exempt from CGT, increased in value unencumbered by taxes on property until 2013.[17]

As such, the question arises as to whether ongoing protection of intergenerational transfers from tax at the current level provided for is merited. Furthermore, the interaction of such reliefs in tandem with the availability of the same event credit (in the case of gifts) means the amount of capital ultimately taxed can, in practice, be quite limited.

Same event credit

As outlined at Meeting 12 and Meeting 16, where both CGT[18] and CAT arise on the same asset by reason of the same event, the 'same event credit', provides that any CGT paid can be offset against the CAT due.[19] The credit is withdrawn if the recipient sells the asset within two years, even where the asset acquired is sold in order to fund the tax liability.

It should be noted that although the CAT and CGT liabilities have been triggered by the same event, the incidence of these two taxes is on separate individuals and each tax is applied for a distinct purpose, being:

- the realisation of capital gains, and
- the acquisition of capital wealth on foot of a transfer by way of a gift or inheritance.

[14] It is noted that some increases will relate to inflation adjustments
[15] Business relief was not introduced until 1994. Prior to this intergenerational transfers of business property were protected only by relationship reliefs, including a favoured nephew/niece relief.
[16] See Appendix 3
[17] 'Taxation of property – influencing supply and tenure decisions' outlines the history of residential property tax, including the Residential Property Tax annual charge (Meeting 9).
[18] Although the credit typically applies in CGT/CAT same event scenarios, the credit may also be available where an event gives rise to both a CAT charge and an exit tax on a life assurance product
[19] Subject to the condition that the credit cannot be greater than the CAT due on that asset and event. As CAT is imposed on market value, the tax chargeable in the absence of any relief would not exceed the CGT which is payable on the uplift in value only.

At the same time, it should be noted that the same event credit can provide a degree of equity with regard to the overall capital tax paid in the case of gifts of assets compared to inheritances - the application of this credit can even out the overall level of capital tax paid in both scenarios (as CGT can arise on the transfer of an asset by way of a gift but not on a death), but this process can be distorted by the application of other reliefs or thresholds.

The credit seeks to avoid two charges to tax arising on a single asset transfer but these charges accrue to separate individuals. Furthermore, in its current design, the recipient receives both the benefit of the asset transfer and the credit, despite the fact the disponer has provided an asset for reduced consideration and incurred a tax charge on that disposal. As such, it may be reasonable to consider if the current design of the credit remains appropriate.

If CGT were to be applied in death cases (discussed in further detail in Chapter 3), depending on the design of the measure, it may be reasonable to consider any CGT and CAT arising on the transfer at death as effectively applying to the same beneficiary.

Examples of interactions between CGT and CAT and impact of reliefs

For simplicity purposes, these examples ignores liabilities, costs and expenses that may reduce:

- any chargeable gain incurred by the disponer for CGT purposes[20], or
- the taxable value of the property for CAT purposes.

In reality is likely that expenses including legal fees, outstanding mortgage amounts, enhancements made to property (in the case of disposals), funeral costs (in the case of inheritances) and consideration paid (in the case of certain gifts) will reduce the amount of CGT and CAT payable.

Example 1: Gift of Property

Tom gifted a house worth €400,000 to his daughter Sara on 1 June 2021. He originally bought the house on 1 June 2004 as a rental property for €250,000.

As the house was not Tom's principal private residence, he was chargeable to CGT on the disposal[21].

Tom's disposal of the house has given rise to a chargeable gain [22] of €148,730 (€400,000 - €250,000 - €1,270 annual exemption) and Tom is required to pay CGT of €49,081 (€148,730 x 33 per cent).

Sara is subject to CAT on the taxable value of the house, which is calculated as follows.

[20] Or increase any capital loss.
[21] Transfers at below market value are deemed to arise at market value
[22] Ignoring any enhancement expenditure or other expenses etc.

Market Value of Property		€400,000
Less Stamp Duty	*(€400,000 x 1%)*	(€4,000)[23]
Taxable Value		€396,000
Less Small Gift Exemption		(€3,000)
Taxable Value		€393,000

If full Group A threshold available

Assuming Sara has not received a gift or inheritance from her parents previously, she can use her full group A threshold to reduce the amount liable to CAT to €58,000 (€393,000 - €335,000), which gives rise to a CAT liability of €19,140 (€58,000 x 33%).

However, as the charges to CGT and CAT arise on the same property and the same event, Sara is entitled to a credit for the CGT paid by her father. This reduces her liability to NIL (as Tom's CGT liability exceeded the €19,140 CAT liability).

Total CGT and CAT arising on Gift of €400,000 property if full Group A threshold: €€49,081

(CGT €49,081 + CAT NIL)

If no Group threshold available

If Sara had previously depleted her Group A threshold, CAT of €129,690 (€393,000 x 33%) would arise. However, the same event credit would reduce her CAT payable to €80,609 (129,690 - €49,081).

Total CAT and CGT arising on Gift of €400,000 property if no Group A threshold: €129,690

(CGT €49,081 + CAT €80,609)

[23] No same event credit arises in respect of Stamp Duty

Example 2: Inheritance of Property

If Sara inherited the rental property worth €400,000 from her father Tom, no CGT would arise on the disposal of the property, as no disposal is deemed to arise on death, but Sara would still be required to pay CAT upon inheriting the house. Her liability would be calculated as follows:

Market Value of Property	€400,000[24]
Taxable Value	€400,000

If full Group threshold available

Assuming Sara has never received a gift or inheritance from her parents previously, she can use her full group A threshold to reduce the taxable amount to €65,000 (€400,000 - €335,000). In this instance, CAT of €21,450 (€65,000 x 33%) would arise on the inheritance of the asset.

Total CGT and CAT arising on inheritance of €400,000 property if full Group A threshold: €21,450
(CGT NIL + CAT €21,450)

If no Group threshold available

If Sara had previously depleted her Group A threshold, CAT of €132,000 (€400,000 x 33%) would arise.

Total CGT and CAT arising on inheritance of €400,000 property if no Group A threshold: €132,000

(CGT NIL + CAT €132,000)

Example 3: Separate disposal and gifting events (gift of proceeds from asset)

If Tom decided to sell the house for €400,000 and gift the net proceeds of that sale to Sara instead of the property, no same event credit would arise as the CGT and CAT liabilities would be arising on different events being:

- the sale of the house (CGTable event)
- the gift of the proceeds (CATable event)

Tom would be subject to CGT of €49,081 on the disposal as calculated in Example 1. **There is no CGT on the gifting the cash to Sara. Due to timing differences, sales and subsequent gifts the comparison in this example may not always be relevant.**

The CATable value of the cash gift is as follows:

[24] No Stamp Duty arises on transfers at death

Market Value of Gift *(Net proceeds less CGT paid)*	€350,919
Less Small Gift Exemption	(€3,000)
Taxable Value	€347,919

If full Group threshold available

As Sara has never received a gift or inheritance from her parents previously, she can use her full group A threshold to reduce the CATable amount to €12,919 (€347,949 - €335,000).

CAT of €4,263 (€12,919 x 33%) would be payable by Sara upon receipt of cash proceeds.

Total CGT and CAT arising if disposal and gift are separate events: €53,344

(CGT €49,081 + CAT €4,263)

If no Group threshold available

If Sara had previously depleted her Group A threshold, CAT of €114,813 (€347,949 x 33%) would arise

Total CAT and CGT arising if disposal and gift are separate events: €163,894

(CGT €49,081 + CAT €114,813)

Table 1: Summary Table of Examples 1 to 3 – Transfer of Investment Property worth €400k to daughter (Group A relationship)

Method of Transfer	If full Group A Threshold Available			If no Group A Threshold Available		
	CGT	CAT	Total	CGT	CAT	Total
Gift of Property	€49,081	€NIL	€49,081	€49,081	€80,609	€129,690
Inheritance of Property	€NIL	€21,450	€21,450	€NIL	€132,000	€132,000
Gift of Proceeds from Property	€49,081	€4,263	€53,344	€49,081	€114,813	€164,614

Example 4: Interaction of Retirement Relief and Agricultural Relief

John gave his farm worth €2.5m to his daughter Erica on 1 January 2022. John is 70 years old and actively farmed the land himself until he was 55 years old when he suffered a minor accident. He then leased his farm to an (unrelated) local farmer until 31 December 2021.

John's assets are qualifying assets for the purposes of retirement relief[25]. As the market value of the assets is less than €3m, no CGT will arise on the disposal of the farm to Erica.

Erica is 40 years old. As a result of the gift, more than 80% of Erica's assets consisted of qualifying agricultural property for CAT purposes.

Erica has no interest in being a farmer so she decided to continue to lease the farm to the local farmer for a 6 year term. As such, Erica qualified as an *active farmer* and was able to claim Agricultural Relief. Accordingly, the market value of her gift was reduced to €250,000 for the purposes of CAT (10%).

Erica had not received any gifts or inheritances from her parents in the past. As such, the full Group A threshold applies and the total taxable value of her gift was €NIL (€250,000 - €335,000). Erica does not owe CAT on this gift.

By leasing the land for a minimum 6 year term, Erica will avoid any clawback on a future disposal of her agricultural property.

As she has chosen to lease the land, Erica may also be able to claim an income tax relief available in respect income arising from the long-term leasing of farmland, which her father previously also claimed[26].

Qualifying criteria for Retirement Relief are available in Appendix 1

Qualifying criteria for Agricultural Relief are available in Appendix 2

In light of the examples outlined above demonstrating the interactions between CGT and CAT, what options exist to reform existing reliefs, thresholds or credits (including the same event credit)?

Base cost at acquisition

Where an asset is disposed of by way of a gift or inheritance, the recipient is generally deemed to have paid full market value for the asset for CGT purposes when calculating the gain on any future disposal made by that recipient[27]. This is dealt with in more detail with regard to death cases in Chapter 3.

It may be reasonable to consider if such an approach is reasonable as this is not reflective of the costs incurred by the recipient.

[25] Although retirement relief typically applies to assets in active use, leased farmland will qualify in certain circumstances including where it was farmed for not less than ten years prior to its first letting.
[26] Leasing farm land - Revenue.ie.
[27] Anti-avoidance rules apply in the case of certain share gifts, limiting the base cost of those shares

3. Treatment of Capital Gains on death

As noted in Chapter 2.1 the transfer of assets on death to a personal representative as part of the administration process is not regarded as a disposal for CGT purposes. The personal representatives of a deceased person are deemed to have acquired the assets at their market value on the date of death[28]. When the assets are ultimately passed to the beneficiaries, again no CGT arises. The individual who receives the assets is also deemed to have acquired them at the market value at the date of death. This is similar to the way in which a gift is treated in the hands of its recipient – where gifts are generally deemed to have been acquired by the recipient at market value.

This is referred to as the step-up or uplift basis, where the base value of an asset is stepped up to current market values. Other countries that employ this treatment of capital gains at death include the UK, the United States, Portugal, France, Spain and South Korea. The step-up basis effectively exempts any capital gains accrued from the date of purchase by the deceased until their death, and may result in low levels of tax arising on death in countries where inheritance or estate taxes are not levied, or where they are levied with high exemption thresholds.

An alternative approach to the treatment of capital gains upon death is the carry-over basis, under which the base value of an inherited asset is the value at which the deceased originally purchased it. This system, therefore, passes liability of unrealised capital gains to the beneficiary when they receive the asset[29]. This system is used in Germany, Italy, Japan and Luxembourg; and is also common in countries that do not levy inheritance or estate taxes, such as Australia, Austria, Norway and Sweden.

This approach may create a difficulty in determining the original purchase date of assets, or the base cost as the successors may not have full knowledge of the acquisition costs incurred by the deceased and as such may be prone to inadvertent error when calculating gains if the inherited assets are disposed of in the future. Although this issue is not necessarily unique to death cases,[30] many countries have a smaller base for capital gains taxation than Ireland and, in countries where this approach applies, the assets in scope may be easier to cost – Germany, for example, applies extensive personal

[28] CGT applies to any gains made by the personal representatives during the administration of the estate.

[29] If the base value was reduced below market value, consideration would have to be given as to whether any taxes or duties payable by the beneficiary (such as CAT or any other taxes or duties payable, including stamp duty if that approach was extended to gifts) should be allowable acquisition costs for any future disposal as the individual could not have acquired the asset without incurring those costs.

[30] Difficulties with establishing the base case can arise in scenarios where an individual disposes of a long-held asset that they do not have purchase records for or an asset transferred to them by their spouse or civil partner. Advances in data on property and land transactions mean this problem diminishes into the future.

asset exemptions for CGT purposes[31], meaning the tax only has application for financial assets, which are more likely to have readily available purchase documentation.

These complexities can be addressed with adequate lead time. The Office of Tax Simplification in the UK (OTS) examined the base cost of capital assets for CGT purposes in November 2020 and recommended removing the uplift or step-up on death, in favour of carrying over the base value to the person inheriting the asset. It suggested that the challenge posed by determining purchase date or base cost could be circumvented by rebasing all assets to a set date (such as the year 2000). However this approach would lead to the loss of any unrealised gains accruing prior to any set date, which may be significant. As an alternative, the OTS suggests a new allowance be introduced for executors of small estates.[32]

Another similar approach is setting the base cost of chargeable assets to the actual costs incurred by the recipient at the time of acquisition. This would ensure that any CGT ultimately paid by the individual at disposal actually reflects the gain that accrued to the individual[29].

Another system used in some countries treats death as a realisation of capital gains. Tax on capital gains is calculated based on the value of the assets at the time of death of the individual.[33] A capital gains tax is applied on death in Canada, in lieu of inheritance or estate taxes. Such capital gains may also be taxed in Hungary[34] (but extensive exemptions exist for direct descendants) and Denmark (however Denmark also applies the carry-over and step-up basis in certain cases[35]). The OECD argues that this may be the most efficient and equitable treatment of capital gains upon death, particularly if flexibility, such as deferral, is offered and capital gains are levied at reasonable rates[36]. However, practical issues and complexities arise with such an approach. Exactly who the incidence of the capital gains charge should fall on in such cases needs to be clear –

- If the executors assume responsibility for collection and reporting of the tax (as they represent the deceased and their estate), they may not have full knowledge of the acquisition costs incurred by the deceased and as such may be prone to inadvertent error when calculating any chargeable gains. If a calculation error arises, it may not be noted until such time as the executors have distributed the estate, which could give rise to tax gaps.

[31] Gains relating to moveable property are only subject to CGT if sold within 1 year. Gains relating to real property are only subject to CGT if sold within 10.
[32] Office of Tax Simplification, Capital Gains Tax review – first report: Simplifying by design
[33] Subject to local calculation rules and exemptions.
[34] Excluding intangibles
[35] Denmark applies the carry-over basis to the transfer of family owned businesses and the step-up basis to some personal items (artwork, jewellery, vehicles, and household goods)
[36] OECD (2021) Inheritance Taxation in OECD Countries

- If the incidence were to fall on the beneficiaries instead, similar costing issues arise. Furthermore, the process of administering an estate can be timely and complex and often takes place at a challenging and sensitive time. Under current rules CGT must be paid in the December or January[37] immediately following the disposal event (the event in this case being a death), however the administration of an estate can take years. As such, the beneficiaries may be in a position where they need their inheritance to cover any tax due but have not yet received it. These administrative issues would have to be managed.

Furthermore if the deceased had unrealised CGT losses at death, clarity would be required as to how such losses would be managed and whether or not such losses should be inherited by the beneficiaries.

Additionally, some countries offer a more favourable tax treatment to inherited assets with unrealised capital gains than to other gifted assets.[38] However, this can create differences in tax liability depending on how the assets are transferred, thereby distorting behaviour. The OECD therefore recommends that consistent tax treatments are applied, so as not to distort individuals' behaviour and create avoidance opportunities[39]

Estate tax

If equality of opportunity is the rationale for taxation of transfers of wealth, inheritance tax is preferable to an estate tax. In other words, the recipient-based inheritance tax focuses on the amount received by each recipient (which is of greater import if equality of opportunity is a consideration) rather than the amount bequeathed by the donor. This approach also incentivises more small bequests rather than fewer large ones, reducing concentrations of wealth. This formed part of the rationale for the abolition of estate taxes in Ireland in 1975 (in addition to the ability to avoid the tax through gifting assets noted previously). Furthermore, although from an administrative perspective estate taxes may be easier to levy,[40] administrative complexities may also arise with regard:

- to the incidence of the tax, where the assets of an estate are predominantly non-cash (should the assets be liquidated to cover any amounts falling due or should such charges fall on the beneficiaries in addition to CAT[41]?), and

[37] 15 December for disposals on or before 30 November, 15 January for any disposals from 1 December to 31 December.
[38] From 1984 to 1999, Ireland typically had reduced rates for gift tax (being 75 per cent of the inheritance tax rate) with a view to encouraging lifetime gifts and avoiding lock-in effects.
[39] OECD (2021) Inheritance Taxation in OECD Countries
[40] OECD (2016), Tax Design for Inclusive Economic Growth; OECD (2021) Inheritance Taxation in OECD Countries
[41] If such a charge were to fall on the beneficiaries, examination of the existing CAT thresholds and reliefs may produce a similar outcome, but with less complexity.

- the timing of the tax, as has been noted previously, the administration of an estate is a challenging and sensitive time for those more likely to be affected by the charge.

Stamp duty

Wills and codicils are specifically exempted from Stamp Duty.

No stamp duty arises on either of the following events:

- the transfer of the deceased's estate to his or her personal representatives, or
- the transfer of assets under a will to the beneficiaries under a will or on intestacy.

Stamp duty however does apply on the documentation supporting the transfer of certain assets by way of gift[42]. It may be reasonable to consider whether such treatment should be extended to inheritances.

[42] As noted in Example 2, any Stamp Duty arising is deductible when determining the taxable value of gifts for CAT purposes.

4. International comparisons

The approach to taxation on death in Ireland is, arguably, somewhat uneven: horizontal equity is set aside to provide preferential tax treatment of transfers to certain individuals based on family relationships, or based on asset classes or sectors of economic activity. As a result, despite a headline rate of 33 per cent, the yield is relatively low. However, Ireland is not unusual in this regard. This section sets out how Ireland compares to other counties both in how they select between inheritance and estate taxes and in the proportion of revenue raised through taxes on inheritance, gift and estate taxes. It then considers how other countries deal with capital gains on death and concludes with the recommendations of an OECD report on taxes on inheritance. As noted above, the majority of CAT arises from inheritance and, consequently, is inextricably linked with death.

Table 2: Current and historical inheritance and estate taxes in OECD countries

Country	Inheritance	Estate	Tax first introduced	Current tax introduced
Belgium*	✓		1795	1936
Chile	✓		1915	1915
Denmark		✓	1792	1995
Finland	✓		1940	1940
France	✓		1791	1791
Germany	✓		1906	1974
Greece	✓		1836	2001
Hungary	✓		1918	1918
Iceland	✓		1792	2004
Ireland	✓		1894	1974/ 1975*****
Italy	✓		1862	2006
Japan	✓		1950	1950
Korea		✓	1950	1950
Lithuania	✓		1990**	2003
Luxembourg	✓		1817	1817
Netherlands	✓		1859	1956
Poland	✓		1920	1983
Portugal	✓		1959	2004
Slovenia	✓		1988	2006
Spain* **	✓		1798	1988

Country	Inheritance	Estate	Tax first introduced	Current tax introduced
Switzerland****	✓		1870	1986
Turkey	✓		1959	1959
United Kingdom		✓	1894	1986
United States*****		✓	1916	1916

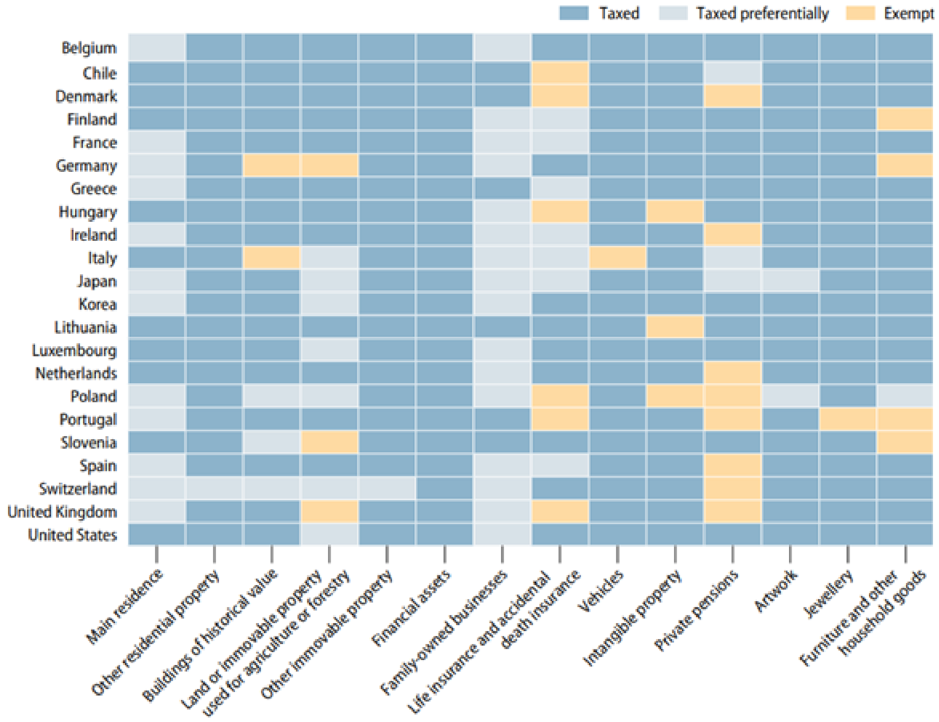
Source: Inheritance Taxation in OECD Countries
*Notes: * Information on Belgium refers to the Brussels-Capital Region.*
*** Due to tax relief inheritances were effectively untaxed between 1990 and 1998.*
**** The central government administers the Inheritance and Gift Tax, however, regional governments may regulate tax base allowances, tax rates, tax deductions, and certain administrative procedures.*
***** Information on Switzerland refers to the Canton of Zurich.*
****** State-level inheritance taxes are not presented in this report, though some states levy an inheritance tax in addition to the federal Estate Tax.*
*******Although CATCA was originally introduced in 1976, these taxes applied from 1974 in respect of certain gifts and 1975 in respect of certain inheritances*

A recent OECD report on inheritance taxation observes characteristics similar to those in Ireland across other countries: wealth transfers tend to favour wealthy households and these transfers will exacerbate wealth inequality.[43] The report also notes that, as life expectancies rise, so does the age that people typically inherit wealth.

Across the OECD, tax bases on inheritance, gifts and estates have narrowed, with many countries throughout the OECD offering preferential reliefs and exemptions in respect of gifts or inheritances of certain classes of assets (see Figure 2). This base narrowing takes the form of takes the form of lifetime gifts (in jurisdictions where no gift tax arises) and other tax planning opportunities.

[43] OECD (2021): Inheritance Taxation in OECD Countries, OECD Tax Policy Studies, OECD Publishing, Paris

Figure 2: Tax treatment of different assets under inheritance and estate taxes



Source: Inheritance taxation in OECD countries (Brochure)

The report also noted that many countries in the OECD have several relationship threshold groups for inheritance tax purposes.

Table 3: Number of beneficiary groups, according to applicable tax rates and exemption thresholds, per country

Number of Beneficiary Groups	Countries
2	Hungary, Japan, Korea, Lithuania, Portugal
3	Chile, Denmark, Greece, Finland, Spain, United Kingdom, United States
4	Belgium, Ireland, Italy, Poland, Slovenia
6	Germany, Luxembourg, Netherlands
7	France, Switzerland

Source: Inheritance Taxation in OECD Countries

Table 3 below sets out the proportion of total revenue that estate, gift and inheritance taxes raise in OECD countries – Ireland is above average.

Table 4: Estate, Inheritance and Gift Tax Revenue as percentage of Total Tax Revenue, 2019

Country	% of Total Tax Revenue
Korea	1.59
Belgium	1.44
France	1.39
Japan	1.31
Denmark	0.79
Finland	0.74
United Kingdom	0.71
Ireland	0.68
Switzerland	0.61
Spain	0.58
Netherlands	0.56
Germany	0.52
Luxembourg	0.46
Iceland	0.44
United States	0.41
Greece	0.34
Chile	0.15
Turkey	0.11
Italy	0.11
Slovenia	0.09
Hungary	0.07
Canada	0.04
Poland	0.04
Norway	0.01

Source: OECD Revenue Statistics

The OECD issues a wide range of recommendations based on these key trends. An estate tax is easier to administer, as it has a smaller number of taxing points (i.e. the tax is levied on the overall estate before it is split between numerous recipients; rather than taxing multiple recipients). Nevertheless, the OECD recommends a recipient-based inheritance tax as this promotes greater equity than an estate tax; i.e. the focus is on the amount of wealth received by each recipient and their personal circumstances, rather than on the overall amount of wealth left by a donor.

The OECD further recommends that wealth transfers are not taxed as personal income as this may create equity imbalances between different recipients based on their own income and personal circumstances, and it may also affect labour supply (if a person's inheritance is treated as personal income, they may reduce their working hours to avoid high marginal effective tax rates). The recommendation for recipient-based inheritance tax also includes exemptions for low-value inheritances to account for efficiency concerns[44]. Although inheritance taxes can be a useful source of income and work to reduce wealth inequality, the report cautions against viewing them as a silver bullet – other complementary taxes and reforms should also be considered.

The OECD prefers a tax on lifetime wealth transfers as the fairest and most equitable means of taxing gifts and inheritances. This means beneficiaries of multiple small transfers pays the same level of tax as beneficiaries of the same (cumulative) amount in one large transfer. This reduces tax avoidance through well-timed transfers of wealth.

The OECD recommends that tax exemption thresholds should allow a recipient to receive a small amount of wealth tax-free, and that the gaps between tax treatment of direct descendants and other, more distant relatives, should not be excessive. The report also suggests that progressive tax rates, in line with vertical equity, can be used to prevent the accumulation of extreme wealth. Table 2 lists the existence of inheritance and estate taxes across OECD countries – a large proportion lean towards inheritance rather than estate taxes.

[44] Ireland employs a small gift exemption for CAT purposes – this exemption is not extended to inheritances.

5. Options for reform

Adapting the base, and rates of CGT and CAT has revenue raising potential as well as being a lever on the distribution of wealth. As noted above with regard to CGT, there is no estimate of the value of the assets that become inherited – a much larger set of assets (and of much greater value) than what we can ascertain from the receipts published by the Revenue Commissioners. The Secretariat will continue to liaise with the Revenue Commissioners on this matter.

In respect of CAT exemptions and reliefs, it is worth noting that the taxation treatment of certain assets on death affects how people consider assets in life – the CAT relief on agricultural assets may make owning such assets more attractive and, all else being equal, increases the price of these assets. Similarly, the relief from CAT in respect of inheriting businesses incentivises practices not entirely consistent with a dynamic business environment and maximising output.[45]

This section outlines some initial options for consideration by the Commission, either as levers to pursue (unspecified) distributional changes or as adjustments to ensure a more efficient system of taxation. The ongoing work of the Commission sub-group may feed into these options and the direction also rests on Commission members' views on the balance of taxation – the objective of shifting the balance in the proportions raised by capital taxes, consumption and personal taxes requires more substantial change; if this is not the objective, more modest adjustments may be sufficient.

The options to adjust the operation of capital taxes relate mainly to changing either of the following:

- the base i.e. a reconsidering the thresholds, reliefs and exemptions that are currently in place, or
- the applicable rates.

For a given revenue yield, an expansion of the base is consistent with a lower headline rate. Again, this depends on whether a substantial change in the balance of taxation is the objective.

5.1. Specific measures

More specific recommendations that the Commission could consider are set out below:

CGT

- Recommending changes to existing CGT reliefs (see Appendix 1) which could include:

[45] See OECD (2021) for an overview of the large negative causal impact on firm performance of family succession.

- the removal of certain reliefs where the policy rationale is no longer considered reasonable,
- amendment to the qualifying conditions, or
- changes to the level of relief or available.

- Examining the treatment of death from a CGT perspective, which could involve:
    - treating death as a realisation of capital gains, with CGT calculated on the value of the assets at the time of death – such a proposal would require consideration of:
        - the incidence of the tax,
        - the application of reliefs on death,
        - how any capital losses realised on death should be managed,
        - the appropriate base cost of the asset in the hands of the beneficiary, and
        - whether a different rate should apply to chargeable gains arising on a death to encourage lifetime disposals.
    - examining how the cost of assets for CGT purposes are affected by a death event, and whether any of the following changes are appropriate:
        - a change from the step-up or uplift basis - where an individual who receives the assets is deemed to have acquired them at the market value, exempting any capital gains accrued from the date of purchase by the deceased until death,
        - a change to the carry-over basis - under which the base value of an inherited asset is the value at which the deceased originally purchased it, or
        - setting the base cost of chargeable assets that are inherited to the actual costs incurred by the beneficiary to receive the asset.

      where any such change is proposed, consideration should also to be given to whether a corresponding change should be made to the cost of assets for CGT purposes on a gift event.
- The rate of CGT - while the Commission may not want to specify a rate, it may wish to indicate a direction of travel (whether such rates should increase or decrease) as part of a broader discussion relating to the overarching structure of the tax, including the degree to which cost of living increases should be considered when calculating a chargeable gain.
- The introduction of a progressive rate structure rather than flat structure (referred to in the paper '*Horizontal equity in the taxation of income and capital*', discussed at Meeting 12).

Estate tax

- Give further consideration to how an estate tax would work, consider the potential base once data are available.

Stamp duty

- Consider whether stamp duty should apply in respect of transfers arising on death.

CAT

- Recommending changes to existing CAT reliefs (see Appendix 2) which could include:
    - the removal of certain reliefs where the policy rationale is no longer considered reasonable,
    - amendment to the qualifying conditions, or
    - changes to the level of relief or the available.
- The rate of CAT - while the Commission may not want to specify a rate, it may wish to indicate a direction of travel.
- The re-introduction of a progressive rate structure rather than a flat rate structure.
- The re-introduction of lower CAT rates for gifts/higher CAT rates for inheritances to encourage lifetime gifts over inheritances.
- Removal of the same event credit linking CGT paid to the CAT due.
- Changes to the absolute level of thresholds or the relative values - an OECD report suggests the relative difference between the treatment of direct descendants and other, more distant relatives, should not be excessive. [46] Potential amendments could include:
    - Closer alignment of the tax-free thresholds,
    - Reductions to the tax-free thresholds and/or limiting any future increases to the cost of living only,
    - Removal of the tax-free thresholds and reintroduction of a favoured rate and band structure (see Appendix 3), or
    - Removal of the exemption available in respect of all gifts and inheritances between spouses and civil partners (and re-introducing *"Group A"* type rules for spouses).

If any of the changes proposed above were to increase the liability of the estate, consideration may also need to be given to mechanisms for deferral or postponement of the tax (including the use of

[46] In Ireland, this could translate to closer alignment of the thresholds that apply to Group A, Group B and Group C – the Group A threshold is currently €335,000, ten times that of Group B (€32,500), which is double Group C (€16,250).

some form of instalment or payment plan approach where appropriate), which could be employed where liquidity does not permit the prompt payment of the tax due.[47]

[47] For example, the CAT legislation currently provides for the postponement of the payment of tax where the tax cannot be paid without excessive hardship.

6. Conclusion

In light of the Commission members' discussions on the introduction of a new tax on net wealth, this paper proceeds on the basis of broad consensus among members that a new tax on net wealth is not the optimal policy response if amendments can be made to existing taxes on the return to, and transfers of, wealth. Inheritances can be an important factor in household wealth and, with wealthy households more likely to receive an inheritance than lower-wealth households, they have important distributional consequences.[48]

This paper outlined the operations of CAT and CGT, with particular reference to the tax treatment of death, where CGT does not apply and where CAT is levied not on the estate but on the beneficiaries. Across CGT and CAT, a range of exemptions and reliefs mean some specific assets can increase in value and transfer in ownership without any taxation.

The discussion proceeds to what changes can be made, where it is most equitable to make changes and what the likely consequences are. This relates to discussions on the taxation of wealth as well as the balance of taxation between earned income, consumption and wealth. Adjusting existing taxation of returns to wealth or transfers of wealth allows for a different balance between the other categories (consumption and labour or personal taxes).

These taxes have been examined across a range of papers over the course of Commission discussions. Given the importance of CGT and CAT – both in terms of the scale of assets that could be part of the CGT base and the influence CAT has in determining people's place in the distribution of wealth – this discussion may assist the Commission in considering potential reforms to both CGT and CAT.

[48] Across the 18 countries analysed, the difference between the share of households in the top and bottom wealth quintiles that report receiving an inheritance is largest in Ireland (51 percentage points). See OECD (2021), Inheritance Taxation in OECD Countries; data source: OECD Wealth Distribution Database

Appendix 1 – List of CGT exemptions and reliefs

A: Principal Private Residence Relief (PPR)

PPR relief exempts gains arising on the disposal of an individual's main residence from CGT. The exemption also applies to grounds of up to one acre (4,046m^2) surrounding the property. The exemption does not specify that the property be located in the State. As such, an overseas property could qualify for the relief.

Only one residence per individual qualifies for PPR at any point in time. Spouses/civil partners may only have one main residence between them.

Full exemption only applies where the owner has occupied the residence throughout their period of ownership[49] – otherwise the exemption is proportionately reduced.

The gain arising on any portion of a private residence used exclusively for business purposes[50] is not exempted. Gains relating to the development value[51] of the property are also not exempted.

An individual may choose to claim PPR for a dependent relative instead of themselves. The residence must have been provided free of charge to the relative and be their sole residence. Although spouses/civil partners may only have one main residence between them, one spouse/partner can choose to claim PPR on the couple's main residence and the other can choose to claim PPR for a dependent relative.

B: Disposal of a site to child

A CGT exemption is available where a parent[52] disposes of land of up to one acre (4,046m^2) to their child (and/or their spouse or civil partner) to allow them to build a principal private residence.

The land must have a value of €500,000 or less.

The relief was introduced from 6 December 2000 (by way of Finance Act 2001) and applied to disposals of land with a value of £200,000 for this purpose. This threshold was increased to €500,000 in Finance Act 2008 and the one acre limit was introduced in Finance Act 2007.

[49] There are certain deemed periods of occupation - such as the last 12 months of ownership and periods where the person was unable to live in the residence for work or health reasons.
[50] This restriction does not apply to an ordinary employee who has a home office or an individual claiming rent-a-room relief in their own home, but does apply to other trading, professional or rental income.
[51] A property might have a higher value than expected due to its development potential. This uplift is its development value.
[52] Or the spouse or civil partner of that parent.

A corresponding stamp duty exemption applies to such transfers.

The exemption is clawed back where the child disposes of the land having neither:

- built a residence on the land nor
- occupied any residence built on that land for at least three years.

The clawback does not arise where the child transferred the land to their spouse or civil partner.

C: Transfers between spouses/civil partners/cohabitants

Transfers of assets between spouses and civil partners do not give rise to a CGT liability[53]. This includes transfers made on foot of a court order relating to a separation, divorce or dissolution of a civil partnership[54].

Where the asset is then disposed to a third party, the chargeable gain is calculated by reference to the whole period of ownership by both spouses/partners. This relief is also extended to certain cohabiting couples[55] who transfer assets on foot of a relationship breakdown by reason of court order.

D: Annual Personal Exemption

Every individual is entitled to an annual exemption from Irish chargeable gains of €1,270 for administrative simplicity purposes. The exemption was initially introduced in respect of gains of £500. The exemption increased to £2,000 in Finance Act 1982 and was reduced to £1,000 in 1992.

The exemption currently has a tax value of up to €419 (€1,270 x 33%) in each tax year. This exemption is not transferrable between spouses.

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[53] Or a CGT loss

[54] Following such an agreement, the relief will typically cease to apply

[55] Couples who have cohabited for 2 years where they are the parents of dependent children and 5 years in all other cases.

E: Retirement Relief

Retirement relief is a CGT relief available to those aged 55 or over[56] who are disposing of all or part of their chargeable business or farming assets[57] (qualifying assets includes assets in a family company). The relief applies differently depending on whether or not the business/farming assets are being disposed of to a qualifying child.

Retirement relief has been available since the introduction of CGT in the 70s, originally providing for:

- Full CGT relief on disposals of £150,000 of farming assets to a child or certain nephews/nieces (and marginal relief thereafter) – the £150,000 cap was removed in 1978, but was partially restored in Finance Act 2012 in respect of disposals in excess of €3m by individuals aged 66 or over to encourage lifetime transfers.
- Full relief on disposals of £50,000 of farming assets to anyone else (and marginal relief thereafter). This threshold was increased to £200,000 in Finance Act 1991 and then increased multiple times in the period to Finance Act 2007[58] where the €750,000 cap was introduced. The €750,000 threshold was reduced back to €500,000 in Finance Act 2012 in the case of disposals by individuals aged 66 or over to encourage lifetime transfers.

Despite the name of the relief, the claimant does not need to actually retire.

i) Retirement Relief – Disposal made to a qualifying child

Where a claimant disposes of farming or business assets to a qualifying child, a full exemption from CGT is available where the claimant is between 55 and 65 years of age.

Where the claimant is 66 or older, the relief is restricted to the business and farming assets with a market value of €3 million. Full CGT applies to any assets received in excess of the threshold.

A qualifying child includes a child or stepchild[59] of the claimant as well as certain nieces/nephews[60], grandchildren[61] or foster children[62].

[56] Can apply to those under 55 where they are either (1) unable to continue in business or farming due to ill health or (2) turning 55 within 12 months of the disposal.
[57] Generally refers to assets employed in the trade and not assets held as investments. Leased assets may qualify but only in strict and limited conditions. See Example 4 for one such set of allowable conditions.
[58] Increased to £250,000 in FA 1995, £375,000 in FA 1998, €500,000 in FA 2003 and €750,000 in FA 2007
[59] Or child of a civil partner
[60] Where they have worked in the business or farm *substantially on a full-time basis*
[61] Being the child of a deceased child of the claimant
[62] Where the foster child was maintained by the claimant for at least 5 years before they turned 18

If the child disposes of the asset within six years, the relief is withdrawn. The child must then pay the CGT on the original disposal by the claimant, in addition to the CGT on their own disposal.

ii) Retirement Relief – Disposal to anyone else

Where a claimant disposes of farming or business assets, a full exemption from CGT is available where the claimant is between 55 and 65 years of age in respect of business or farming assets with a market value of €750,000 or less. Where the claimant is over 66, a threshold of €500,000 applies instead.

Where the consideration/market value of the assets is in excess of the relevant threshold, marginal relief applies, which restricts the CGT payable to half the difference between the threshold and the excess. Transfers of assets to spouses are taken into account when determining if these thresholds have been breached.

F: Revised Entrepreneur Relief

Revised Entrepreneur relief was designed to promote entrepreneurship and applies to individuals who reinvest the proceeds of certain business asset disposals into new business ventures. The relief provides for a reduced 10 per cent rate of CGT[63] on chargeable gains arising from the disposal of qualifying chargeable business assets by certain individuals on or after 1 January 2016. The reduced rate of CGT applies to a lifetime limit of €1,000,000 of qualifying chargeable gains.

The replaced the original Entrepreneur Relief[64] that was introduced in Finance Act (No. 2) 2013.

Qualifying assets for this relief are:

- assets used for the purposes used for the purposes of a qualifying business carried on by an individual[65],
- ordinary shares in either a qualifying business or a holding company of a qualifying group held by an individual (shareholding must be 5 per cent or greater)[66].

[63] The relief originally provided for a 20 per cent rate, but this was reduced to 10 per cent in 2017.
[64] This relief was withdrawn on 31 December 2018, but may continue to apply on the disposal certain assets that met the qualifying criteria between 1 January 2014 to 31 December 2018.
[65]This does not include assets owned by an individual but used for the purposes of a company's trade.
[66] Where the individual is disposing of ordinary shares, they must also have been a director or employee of the qualifying business/group who working wholly or mainly for the business in a managerial or technical capacity for a continuous period of 3 out of the in the 5 years prior to the sale of the shares.

The individual must have owned the qualifying assets for a continuous period of three years in the five years prior to disposal, except in the case of shares which can have been held for three continuous years at any time prior to disposal

A qualifying business is one that does not relate to the:

- holding of securities or other assets as investments,
- holding of development land, or
- development or letting of land.

In the case of holding company shares, if one subsidiary within a group[67] is neither a qualifying business, nor a holding company, the relief will not apply on the sale of the shares.

The ownership period and working time definitions do not allow for an individual who originally set up a business as a sole trader or in partnership and subsequently incorporated that business.

G: Rollover Relief

Rollover relief allowed trades[68] to defer payment of CGT on chargeable gains arising from the sale of certain business assets, rental properties, shares as well certain other assets subject to a CPO.

Where applicable, the relief generally deferred any tax arising on a chargeable again where the proceeds were invested in similar qualifying assets. Partial deferral was typically available where the proceeds were partially invested.

The relief deferred the qualifying chargeable gain until such time as no further qualifying reinvestments were made - This meant that if the reinvested assets were also sold at a gain and reinvested, the chargeable gains arising on both disposals would be deferred until such time as the final reinvested asset was disposed of and no new reinvestments were made

Rollover reliefs were withdrawn in December 2002 by way of Finance Act 2003[69]. The rationale for the withdrawal of the relief was its potential to create permanent deferrals of CGT – as death is not a disposal event for the purposes of CGT, in death cases the final disposal would not trigger. This

[67] Refers to 51 per cent subsidiaries only

[68] In addition to trades, the relief also applies in the case of professions, public authorities, the occupation of woodlands on a commercial basis, offices and employments, trade protection associations, non-profit making bodies, amateur sports bodies and farming.

[69] The relief still has application for qualifying reinvestments made prior to 4 December 2002 that have yet to be disposed of.

prevented the earlier deferred gains, which had been realised in the lifetime of the claimant, from becoming collectable.

Furthermore, following the introduction of a 20% rate in Finance Act 2000, the use of such a relief in conjunction with a low rate was not considered justifiable and was withdrawn to help maintain the low rate (as part of a low rate, low relief strategy, inspired by the work of the 1980s Commission on Taxation)[70].

i) Rollover Relief on Business Assets

Rollover relief allowed trades[71] to defer payment of CGT on chargeable gains arising from the sale of certain business assets where the proceeds were reinvested[72] in new assets for the same trade. In limited circumstances, the relief could apply where a new trade was commenced[73].

The relief was first introduced in the original Capital Gains Tax Act

The relief deferred the chargeable gain until such time as no further reinvestments in new business assets were made - This meant that if the reinvested assets were also sold at a gain and reinvested, the chargeable gains arising on both disposals would be deferred.

Both the asset disposed of and the new asset must be within one of the following categories (but both did not need to be within the same category):

- Plant or machinery[74]
- Goodwill
- Land and buildings[74]
- Financial assets of certain sporting bodies

The rate applicable to the disposals was that in force on the ultimate disposal date of the final reinvestment.

The relief was subject to restriction in scenarios where:

- the original assets were used partly for a non-trading purpose, or
- the proceeds of an asset sale were only partly reinvested.

[70] Finance Bill 2003 - Second Stage (Resumed)
[71] In addition to trades, the relief also applies in the case of professions, public authorities, the occupation of woodlands on a commercial basis, offices and employments, trade protection associations, non-profit making bodies, amateur sports bodies and farming.
[72] Qualifying reinvestments took place within one year before or three years after the date of disposal.
[73] In situations where individual or company carried on a trade for 10 years, ceased to trade and commenced a new trade within 2 years of cessation.
[74] Must be used wholly for the purposes of the trade/profession

The relief generally did not apply in the case of disposals of development land subject to certain specified exceptions.

ii) Rollover Relief in respect of disposal of certain rental property

A rollover relief applied in respect of gains on the disposal of certain residential rental properties between 5 January 2001 and 3 December 2002, where the properties complied with certain housing regulations. For the gain to be fully rolled over/deferred, the entire proceeds, net of costs needed to be reinvested in similar residential property[75]. Partial relief was available where the proceeds were not fully reinvested.

iii) Rollover relief in respect of disposals of certain shareholdings

A rollover relief also applied to an individual selling company shares or securities where the proceeds were reinvested in a new trading company, subject to certain disposal and reinvestment criteria being met.

The relief was introduced in 1993 and withdrawn in December 2002.

A disposal by an individual of shares/securities in a company could qualify where for the 3 years prior to the date of disposal (or the date the company started trade, if shorter):

- the company was a trading[76] company (or a holding company of a trading group), and
- the individual was a full-time employee, part-time employee, full-time director or part-time director of either the company or another company in the group (where applicable).

In order for the reinvestment to qualify:

- the individual must:
    - hold at least 5 per cent of the ordinary share capital of the new company within one year of disposing the shares in the old company, or 15 per cent within 3 years of the disposal

[75] The replacement premises needed to contain at least 3 residential units AND not less than the number of units disposed of (i.e. 1 unit would need to be replaced with at least 3, but 5 units would need to be replaced with at least 5) otherwise the relief would not apply.

[76] Both companies must be carrying on a trade or profession. Neither company can be an investment company. Share dealing and bond dealing companies were also excluded from the relief.

    - becomes a full-time director or a full-time employee within the first year of the original disposal and remain in that role until 3 years after the date of the original disposal (unless a bona fide dissolution occurs)

  and

- the new company must:
    - be incorporated in the State and for the three years following the date of the original disposal be resident in the State and unquoted[77] (unless a bona fide dissolution occurs)
    - not be part of the same group as the old company
    - use the money raised from the share issue to carry out its training or professional operations
    - not be under the control of another company

Full relief was given where the entire proceeds from the disposal were reinvested, within the period of 3 years from the original disposal date. Partial relief was available where only part of the proceeds were reinvested.

H: Relief for farm restructuring

CGT relief is available where an individual disposes of farmland for restructuring purposes. The relief was introduced in Finance Act 2013. The purpose of the relief is to make the farm more efficient by either selling and purchasing, or exchanging parcels of land to bring them closer together. A parcel of land is an entire agricultural field or group of fields used for farming purposes. The relief provides:

- full relief from CGT where the value of the land acquired (purchased or exchanged) is equal to or exceeded the value of the land disposed of, and
- partial relief where the value of the land acquired is less than land disposed of – in such cases the relief granted in such cases is proportional to the amount reinvested

For the relief to apply:

- the first sale, purchase or the exchange must occur between 1 January 2013 and 31 December 2022,

[77] Being quoted on the Developing Companies Market of the ISE will not result in a loss of rollover relief

- (where the land was not exchanged) the subsequent sale or purchase must occur within 24 months of that sale or purchase,
- Teagasc must have certified that the transaction was made for farm restructuring purposes, and
- the transaction must bring an individual's parcels of land closer together.

A clawback applies where the land acquired in the transaction is disposed of within five years of acquisition – unless the land was sold by reason of a compulsory purchase order.

I: Transfer of a business to a company

Where an individual transfers the business of their sole trade or partnership to a company, together all of the assets of the business[78] in exchange for shares in that company, any chargeable gain arising is deferred until the shares are ultimately disposed of. This relief has been available since the inception of CGT.

J: Indexation Relief

Indexation relief applies to assets purchased prior to 2003. The measure was introduced in 1978 and provides for relief from the effects of inflation when calculating chargeable gains by allowing costs incurred to be adjusted by reference to the increase in the Consumer Price Index during the period of ownership (up to 31 December 2002[79])[80]. The relevant adjustment factors are available on the Revenue website.

Indexation relief was introduced at a time when inflation was high and was withdrawn[81] in Finance Act 2003 at a time when the rate of inflation was consistently lower. It was felt the rationale for the relief was no longer applied in an environment where both the CGT rate (a 20% rate was introduced in December 1999) and the inflation rate was low[70].

Furthermore it was felt that removal of the relief could help maintain the ongoing use of a low CGT rate and as indexation relief did not apply to VAT, CT or IT, the ongoing existence of indexation relief for CGT represented an anomaly in the tax code.

[78] Or all of the assets other than cash
[79] Or the date of disposal if earlier.
[80] Where the asset was bought prior to 6 April 1974 (the date CGT was introduced), the asset is deemed to have been bought on 6 April 1974 for indexation purposes.
[81] Although as noted above, it continues to apply to disposals of assets acquired prior to 31 December 2002.

Indexation cannot be used to:

- increase an actual loss – in such cases allowable losses are restricted to actual losses
- convert an actual gain into a loss – in such cases, neither a gain or a loss is deemed to arise
- convert an actual loss into a gain – in such cases, neither a gain or a loss is deemed to arise

Any costs relating to the development value of land or buildings[82] cannot be indexed.

[82] If farmland was bought for €1m because of its development potential in 2000, but was only worth €50,000 as farmland (its *current use* case), indexation relief only applies to €50,000 of the purchase costs.

Appendix 2 List of CAT reliefs and exemptions

A: Small Gift Exemption

The first €3,000 in gifts made by any one donor to any one recipient in a year is exempt from CAT. Where an individual receives a gift of €3,000 or greater from multiple donors in a year, the first €3,000 from each unique donor is exempt. This exemption does not apply to inheritances.

This exemption has been available since the introduction of CAT, originally providing for a £250 exemption which increased to £500 in 1978, and £1,000 in 1998 before finally increasing to €3,000 in Finance Act 2003.

B: Dwelling House Relief

Dwelling house relief provides complete exemption from CAT on the gift or inheritance of a dwelling house (including gardens of up to one acre, or 4,046m^2) where certain conditions are met.

The relief was introduced in 2000 to address concerns that the then CAT Group A threshold did not adequately protect the family home in an inheritance scenario and previously had much broader application, but was restricted in Finance Act 2016 to limit the exemption on the gifting of dwelling houses to dependent relatives only.

i) Inheritance of dwelling house

A full exemption arises on the inheritance of a dwelling house (or an interest thereon), where the following criteria apply:

1. The property was the only or main home of the deceased person at their date of death. This condition does not apply where:
    - the deceased person had to leave their property due to ill health,[83] or
    - the recipient is a dependent relative.
2. The property was the only or main home of the recipient for the three years immediately before the date of the inheritance[84].
3. The recipient does not own, or have an interest in any other dwelling house.

[83] For example, the person has moved to a nursing home.
[84] Where the dwelling house on which the exemption is claimed, replaced another dwelling house in this period, this condition will be satisfied where the recipient has continuously occupied both houses as their residence for 3 of the 4 years immediately prior to the date of the inheritance

4. The recipient does not acquire an interest in any other property from the person who provided the inheritance between the date of the inheritance and the valuation date.

The house must continue to be the only or main home of the recipient for six years after the date of the inheritance. This condition does not apply where the recipient is 65 older or required to live elsewhere either by their employer or on certified medical grounds.

Where the house is sold within six years, a clawback applies unless the proceeds are reinvested by the recipient in another dwelling (a partial clawback applies where the proceeds are not fully reinvested).

ii) Gift of dwelling house to dependent relative

The exemption also applies to gifts of residential properties to dependent relatives of the donor.

A dependent relative is a direct relative of the disponer (or the disponer's spouse or civil partner) who is either:

- permanently and totally incapacitated because of physical or mental infirmity from maintaining himself/herself, or
- over the age of 65.

The donor does not need to have lived in the property prior to the date of the gift. However, the requirements for the recipient to:

- reside in the property for a full three years prior to receiving the property, and
- have no interest in any other property at that time,
- apply in the case of gifts of property as well as inheritances.

Similar to the inheritance relief, to a clawback the individual must comply with the 6 year rule except in instances where the recipient is over 65 or ceases to occupy the property as a consequence of their mental or physical infirmity.

C: Agricultural Relief and Business Relief

CAT is normally based on the market value of the property included in a gift or inheritance, subject to allowances for any relevant liabilities, costs and expenses payable. Agricultural Relief and Business Relief allow for the taxable value of the gift or inheritance to be reduced by 90 per cent, but in slightly different ways.

Where a gift or inheritance satisfies the conditions for both agricultural relief and business relief, agricultural relief must be claimed.

i) Agricultural Relief

Agricultural relief applies to gifts and inheritances of agricultural property (or interests therein). The relief has been in place since the introduction of CAT in the 70s and originally provided for a 50 per cent reduction in the market value of gifts and inheritances of agricultural property worth £100,000 or less where at least 75 per cent of the recipient's assets consisted of agricultural property after the gift or inheritance. The relief grew incrementally over time[85] and provided for a 90 per cent reduction on all agricultural property assets by Finance Act 1997.

Agricultural property refers to:

- agricultural land, pasture and woodland (situated in the European Union or the United Kingdom)
- crops, trees and underwood growing on such land
- entitlements to farm payments under EU Regulations
- farm buildings and dwelling houses on the land
- livestock, bloodstock and farm machinery on the property
- milk quotas where transferred with agricultural land (Revenue practice).

The relief applies to recipients of gifts or inheritances who are *farmers* within the meaning of the CAT Acts.

A *farmer* is an individual whose assets, after taking the gift or inheritance, are represented mainly by agricultural property (at least 80 per cent of the value of total assets). A farmer must also *actively farm* the property for six years. This means they must either:

- farm the agricultural property on a commercial basis[86] for at least six years from the date of the gift or inheritance, or
- lease the property to someone who farms the agricultural property on a commercial basis for at least six years from that date – this test can also be met if agricultural land is leased for the installation of solar panels.

[85] There were 9 changes made to agricultural relief in the period to 1997. These changes related to thresholds, farmer tests and allowable reductions – during the 90s, the relief was often more favourable for gifts than inheritances to encourage the disposal of assets during the disponer's lifetime.

[86] The individual must either (1) dedicate at least half their working time to farming on a commercial basis or (2) hold or obtain a qualification in farm management within 4 years of receipt of the agricultural assets while also farming on a commercial basis.

Where the relief applies, the market value of any agricultural property transferred under the gift or inheritance is reduced by 90 per cent. As the market value is reduced, the costs and expenses associated with the agricultural property, (including any consideration) are also proportionately reduced before being deducted.

The relief is withdrawn where the individual ceases to be an *active farmer* in this period.

A clawback may also arise where the inherited or gifted property is disposed of[87] within six years of the date of the gift or inheritance and the proceeds are not reinvested in other agricultural property[88]. Where the proceeds are only partially reinvested, a partial clawback arises. Where the agricultural property comprises development land, a clawback arises where such land disposed of within ten years.

ii) Business Relief

Business relief applies to gifts and inheritances of relevant business property.

This relief was introduced in Finance Act 1994 and provided for a 30 per cent reduction on the taxable value of the first £250,000 of relevant business property and a reduction of 25 per cent for the balance. This relief grew incrementally over three years and was increased to provide for a 50 per cent reduction in the taxable value of **all** such property in 1995, a 75 per cent reduction in 1996, and finally a 90 per cent reduction in 1997. Relevant business property refers to:

- A business or an interest in a business – individual assets used in the business do *not* qualify for the relief if they are transferred to the recipient without the business itself.
- Unquoted shares of a company provided that the recipient will, after the gift or inheritance:
    - own more than 25per cent of the voting rights of the company,

      or
    - control the company with their relatives (i.e. the recipient and their relatives together will control more than 50 per cent of the company),

      or
    - own 10 per cent of the issued share capital of the company and has been a full time working director/employee of the company89 for the 5 years immediately prior to the date of the gift or inheritance
- Land, buildings, machinery or plant, which are used in a company or business which were:

[87] Or compulsorily acquired
[88] Within a year of the disposal of the original qualifying property
[89] Or, where the company is in a group, any company within that group

  - used in a qualifying business carried on by a company or a partnership controlled by the disponer (the person giving the gift or inheritance), and
  - owned by the disponer rather than that company or the partnership
  - transferred at the same time as the partnership interest or company shares

Quoted shares in a in a company carrying on a business which would have otherwise qualified for the relief and were originally unquoted when acquired by the disponer (i.e. the disponer was responsible for the public listing of the shares).

The relief is aimed at genuine trading businesses and not those that hold investments. As such business property relating to businesses that consist wholly or mainly of:

- dealing in currencies, securities, stocks or shares, lands or buildings, or
- making or holding investments,

do not qualify for relief.

To prevent abuse of the relief (through the acquisition of relevant business property or business assets solely to provide a larger relieved gift or inheritance), restrictions generally require:

- the disponer to have owned the relevant business property, and
- for any business assets to been wholly or mainly in use by the business,

for at least 2 years in the case of an inheritance taken on the death of the disponer and 5 years in all other cases.

Where the relief applies, the net taxable value (i.e. the value after any costs or expenses) of the gift or inheritance is reduced by 90 per cent.

A clawback may also arise where the inherited or gifted property is disposed of within six years of the date of the gift or inheritance and the proceeds are not reinvested in other agricultural property[90]. Where the proceeds are only partially reinvested, a partial clawback arises. Where business property comprises development land, a clawback arises where such land is disposed of within ten years.

Relief will not be withdrawn where a business ceases trading because of bankruptcy or insolvency.

[90] Within a year of the disposal of the original qualifying property

Appendix 3 Evolution of CAT relationship thresholds

CAT originally employed a rate and band system, with more favourable rates and bands depending on the relationship between the disponer and the recipient. The rate and band groupings were as follows:

1. Recipient is spouse, child, or a minor child of a deceased child of disponer (max rate 50 per cent) – *also applied to a favoured niece/nephew*[60] *in the case of business property only*
2. Recipient is lineal ancestor or descendant (other than a child, or a minor child of a deceased child) of disponer (max rate 50 per cent)
3. Recipient is brother or a sister (or a child of a brother or of a sister) of the disponer (max rate 50 per cent)
4. All others (max rate 60 per cent)

The original rates and bands are available here. The gifts or inheritances taken from a single disponer by a single donee or successor were to be aggregated.

The rate and band approach was replaced with tax free group thresholds in 1984 – the groupings of which are broadly similar to those in force today.

Table 4: Current format of Capital Acquisitions Tax groups

Group	Relationship to the disponer
A	Child (son or daughter, including step-children and certain foster children), or a minor child of a deceased child of the disponer. Parents also fall within this threshold only where they take an absolute inheritance from a child.
B	Sibling (brother or sister), niece or nephew, or a lineal ancestor or descendant of the disponer where not included in A).
C	Other than A or B

One notable difference between 1984 and today is that spouses were originally included in group A and were not exempted until Finance Act 1985 in respect of inheritances and Finance Act 1990 in respect of gifts.[91]

From 1990 to 2011, the value of these thresholds was subject to indexation and adjusted in line with the CPI[92] - with an increase beyond CPI provided for in Finance Act 2000. In Finance Act 2009, the thresholds were reduced by 20 per cent for the first time reflecting reductions in the price of property in Ireland. Further reductions in the thresholds were provided for in Finance Acts 2011-2013[93] reflecting falling property prices as well as a need to raise revenue. The thresholds began to increase again at the end of 2015, but such increases have not been tied to inflation. This pattern can be observed in Figure 1.

[91] Has since been expanded to apply to transfers between civil partners and certain cohabitants on foot of a relationship breakdown.
[92] Old Revenue Website - CAT Thresholds
[93] A reduction also occurred in 2010 due to deflation.

The Finance Act 2011 amendment also restored the differential rate between the Group A and B thresholds which had existed up to 1999 (which provided for Group A being 7.5 times Group B as opposed to ten times). This was done to rebalance the yield from the tax. However, this differential has since increased again and Group A is now just over ten times larger than Group B.

Although these thresholds may be thought of as lifetime limits, the aggregation rules on gifts and inheritances have changed several times since inception, often providing the beneficiary with a clean slate – currently when determining if a relationship threshold has been breached, an individual should only consider gifts and inheritances received on or after 5 December 1991.

Appendix 4 CGT and CAT – 2021 Report in terms of revenue foregone

Description	Further Information	No. Utilising or No. of Claims in most recent year for which information is available	Revenue Foregone in most recent year for which information is available (€ millions)	No. Utilising / No. of Claims in previous year*	Revenue Foregone in previous year (€ millions)*
CGT Retirement Relief	Provides relief for disposals of business and farming assets.	1,604 (2019)	Tax cost is not available as the only information in respect of this relief is the disposal consideration rather than the actual taxable gain foregone.	1,400 (2018)	Tax cost is not available as the only information in respect of this relief is the disposal consideration rather than the actual taxable gain foregone.
CGT entrepreneur relief	Provides relief for disposals of business assets.	N/A	N/A	N/A	N/A
Revised CGT entrepreneur relief	Provides relief for disposals of business assets.	974 (2019)**	94.6 (at reduced 10% rate in 2019)**	875 (2018)**	92.4 (at reduced 10% rate in 2018)**
CGT principal private residence relief	Provides relief for disposal of main residence.	N/A	N/A	N/A	N/A
CGT Farm consolidation relief	Provides relief for disposals of land in order to consolidate farm holdings.	18 (2019)**	0.8 (2019)**	17 (2018)**	0.6 (2018)**
CGT relief on disposal of certain land or buildings	Section 604A	890 (2019)**	177 (2019)**	632 (2018)**	113 (2018)**
CGT relief for venture fund managers	Provides relief in respect of carried interest earned by venture fund managers	N/A	N/A	N/A	N/A
CGT exemption on disposal of site to a child	Provides relief for parents transferring a site to their children in order to build a house.	179 (2019)	Tax cost is not available as the only information in respect of this relief is the disposal consideration rather than the actual taxable gain foregone.	104 (2018)	Tax cost is not available as the only information in respect of this relief is the disposal consideration rather than the actual taxable gain foregone.
CGT relief on works of art loaned for public display	Provides relief for disposals of works of art loaned for public display.	N/A	N/A	N/A	N/A

Description	Further Information	No. Utilising or No. of Claims in most recent year for which information is available	Revenue Foregone in most recent year for which information is available (€ millions)	No. Utilising / No. of Claims in previous year*	Revenue Foregone in previous year (€ millions)*
CAT business relief	Relief for transfers of businesses (90% reduction in market value for tax purposes)	603	185.5	648	200.4
CAT agricultural relief	Relief for transfer of farms (90% reduction in market value for tax purposes)	1,598	154.6	1,413	158.6
CAT exemption of heritage property	Exemption from tax for transfers of heritage houses and objects	Indicative information suggests the number using this exemption is negligible	Exact figures are not available, but thought to not be significant	Indicative information suggests the number using this exemption is negligible	Exact figures are not available, but thought to not be significant

Source: 2021 Report on Tax Expenditures, Department of Finance

** All figures for 2020 (most recent year) & 2019 (previous year) unless stated otherwise. ** Figures for later years not yet available.*