

## CHAPTER 10

CAPITAL ACQUISITIONS TAX  
CAPITAL GAINS TAX  
FARM TAX  
RESIDENTIAL PROPERTY TAX

### GIFTS AND INHERITANCES BETWEEN SPOUSES

# LAW SOCIETY CONVEYANCING HANDBOOK



Since publication of the Practice Note in the June 1991 issue of the Gazette it has come to the attention of the Taxation and the Conveyancing Committees that the Revenue Commissioners take the view that notwithstanding the provisions of Section 127 of the Finance Act, 1990 there are circumstances where a charge to CAT may arise in a gift between spouses, or as a result of a prior gift between spouses.

Section 8 of the Capital Acquisitions Tax Act, 1976 provides where a donee takes a gift from a disponent and within three years a further disposal of the gift takes place the beneficiary of the second gift is deemed to take the gift from the original disponent.

For example, if a parent gives property to his son who subsequently transfers the property into joint names of himself and his spouse within three years of the first gift, the Revenue Commissioners have made it clear that they may regard this latter transaction as a gift between parent-in-law and daughter-in-law, to the extent of half the property.

Furthermore, if a wife gives property to her husband, who subsequently transfers the property into the name of his parents within three years of the first gift this latter transaction would be deemed to be a gift between daughter-in-law and parents-in-law.

Section 8 only applies to gifts and is an anti-avoidance provision.

In the context of family settlements one must be wary of any inter vivos disposals within three years of the proposed disposal, as these may be caught by the provisions of Section 8 of the Capital Acquisitions Tax Act, 1976.

To avoid the provisions of Section 8 one must either await the elapse of the three year period or in the alternative dispose of the property by will.

This anti-avoidance provision also related to gifts made within three years before the date of the gift. It may be possible that the Revenue Commissioners may accept that the subsequent gift does not come within the provision when the subsequent gift was not connected with the first gift.

Taxation Committee