

# Capital Acquisitions tax and Section 72

## Frequently asked Questions

### Life Advisory Services

For Financial Advisors only

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# Capital Acquisitions Tax - the basics



## What is Capital Acquisitions Tax (CAT)?

CAT is a tax you pay when you receive a gift or an inheritance. CAT comprises two separate taxes - a Gift Tax payable on lifetime gifts and an Inheritance Tax payable on inheritances received on death. It is the person receiving the gift or inheritance who is liable to CAT and not the person or estate providing the benefit.

## How is it charged?

With effect from 1st December 1999, a charge to CAT will arise where either the disponent (the person giving the asset) or the beneficiary (the person receiving the asset) is resident or ordinarily resident in the State at the date of the Gift or Inheritance.

Where both the disponent and the beneficiary are not resident or ordinarily resident in Ireland, a charge to tax would only arise in relation to Irish property.

## What is the tax rate?

33% is the current rate of tax on gifts or inheritances received by a beneficiary.

Source CAT Consolidation Act 2003 (as updated by subsequent Finance Acts).

## Can you get any amount tax free?

The amount a beneficiary can receive tax free depends on their relationship to the 'disponent'

## Group Thresholds

<b>Group 1</b> <b>€335,000</b>	Where the person receiving the property is <ul style="list-style-type: none"><li>&gt; a child of the disponent or,</li><li>&gt; a child of the civil partner of the disponent, or,</li><li>&gt; a minor child of a deceased child of the disponent or,</li><li>&gt; a minor child of a deceased child of the civil partner of the disponent, or,</li><li>&gt; a minor child of the civil partner of a deceased child of the disponent, or,</li><li>&gt; a minor child of the civil partner of a deceased child of the civil partner of the disponent.</li></ul>
<b>Group 2</b> <b>€32,500</b>	Where the person receiving the property is <ul style="list-style-type: none"><li>&gt; a lineal ancestor of the disponent,</li><li>&gt; a descendant of the disponent,</li><li>&gt; a brother/sister of the disponent, or,</li><li>&gt; a child of a brother/sister of the disponent, or,</li><li>&gt; a child of a civil partner of a brother or sister of the disponent.</li></ul>
<b>Group 3</b> <b>€16,250</b>	All other cases

The threshold amounts are those applying with effect from 9th October 2019. Source CAT Consolidation Act 2003 (as updated by subsequent Finance Acts).

## Is that tax free amount per gift and per inheritance?

No. The tax free threshold amount is the total amount you can receive tax free in your lifetime, from each different 'group'.

Under the current rules (called aggregation rules) all benefits from Group 1 will be added together with an overall threshold of €335,000.

Benefits from Group 2 members (brother, sister, grandparent etc) will be added together for the purpose of the €32,500 threshold, and benefits from Group 3 members (strangers) for the purpose of the €16,250 threshold.

So in effect a beneficiary can potentially receive up to €383,750 tax-free if the benefits come through different "groups".

## Is tax payable on everything you receive as a gift or inheritance?

While tax is payable on all assets you receive certain reliefs and exemptions apply to certain types of assets. The main reliefs are:

**Agricultural Relief** – the value of farmland, buildings and stock can be reduced by 90% where the beneficiary is a qualifying farmer and holds the property for a minimum of 6 years.

**Business Relief** – can provide a similar reduction of 90% in the value of certain businesses or private companies, where both the business and the beneficiary meet certain conditions.

**Family Home Exemption** – exemption from Gift and Inheritance Tax is available on the value of certain "dwellings" with up to an acre of land where the donor and the beneficiary meet certain conditions.

**Life Assurance Relief** – the proceeds of life assurance plans, where the plan was effected specifically for the payment of Inheritance Tax or the tax payable on the value of an Approved Retirement Fund (ARF) inherited by a child over the age of 21, will not be subject to Inheritance Tax – provided the money is actually used to pay the relevant tax bills.

**This 'Life Assurance Relief' is commonly referred to as 'Section 72 Relief'**



# Section 72



## How to structure the plan

Plan Details	Section 72 Relief
Life Assured	Person leaving assets / disponer
Plan Owner	Plan Owner
In Trust	Yes – Special Section 72 Trust Form
Payer of premiums	Person leaving assets / disponer

## How to complete the Section 72 declaration on the application form

### 2. Inheritance Planning - Life Long Insurance (section 72)

Amount of Life Cover you want

Do you want Inflation Protection Yes  No

Do you want this plan to be eligible for relief under Section 72 of the CAT Consolidation Act 2003? Yes  No   
 You would usually do this if this plan is being used for inheritance tax planning.

If you intend to use this plan for inheritance tax planning, have you filled in a trust request form? Yes  No   
 If 'No', please read and sign the statement below.

I am aware that if I do not fill in a trust form or provide for this plan in my will the proceeds will not qualify for relief under Section 72 of the CAT Consolidation Act 2003 and therefore my beneficiaries will have to pay more inheritance tax.

Signature of the first person to be covered

Date

Signature of the second person to be covered

Date

Fill in level of cover required

Is indexation required? Yes or No

Tick Yes for section 72 plan

If 'No', please read and sign the statement below

If there is no trust form completed the declaration at section 2 must be signed by the life / lives assured / plan owners

## Can the beneficiary of the estate, the person who will pay the tax bill, be the plan owner / proposer on the Section 72 contract?

**No.** For relief under Section 72 CAT Consolidation Act to apply the person leaving the assets must be the plan owner, must be the life assured and must pay the premiums on the qualifying plan.

If the person who is going to be paying the tax bill, the beneficiary, wants to pay the premiums on the plan themselves then that is simply just a 'life of another' contract with the beneficiary as the plan owner, and the payer of premiums and the 'disponer' or the person who is leaving the assets, as the life assured. The insurable interest is the fact that the beneficiary will have a tax liability to pay on the death of the life assured.

## Can the beneficiary of the estate pay the premium on the policy for example a son pays the premiums on his parents Section 72 plan?

**No.** In line with Revenue Guidance Notes for eligibility for Section 72 relief, the life assured, the payer of the premiums and the person leaving assets must be the same person.

However, if the person who is going to be paying the tax bill, the beneficiary, wants to pay the premiums on the plan themselves, then that is simply just a 'life of another' contract with the beneficiary as the plan owner, and the payer of premiums and the 'disponer' or the person who is leaving the assets, as the life assured. The insurable interest is the fact that the beneficiary will have a tax liability to pay on the death of the life assured.

## Can an existing plan be amended to be eligible for relief from Inheritance Tax?

**No.** The plan has to be taken out specifically from day 1 as a 'special' plan to pay inheritance tax. What the Revenue Guidance Notes state is that the plan has to be taken out expressly to pay Inheritance Tax.

## What happens if the Inheritance Tax bill is LESS than the level of cover under the plan?

The amount of the sum assured actually used to pay inheritance tax is exempt from inheritance tax. Any proceeds not used to pay inheritance tax (excess sum assured over inheritance tax bill) are a taxable inheritance.

## Can an unmarried couple who are living together effect a joint life Section 72 plan?

**No.** Only legal spouses or registered civil partners can effect a joint life Section 72 plan. Where a non-married couple wish to use Section 72 relief they will have to effect two separate single life plans.

## What happens if the person dies before the 8 years is up?

The relief will NOT be lost as long as the plan was set up for a term of at least 8 years from the outset.

## Can the sum assured be reduced?

**Yes.** Where the plan terms and conditions allow it yes the sum assured can be reduced BUT the life cover must never be lower than 8 times the annual premium, or 6 times the annual premium where there is a loading on the contract.

## Can the premium be reduced?

Yes. Again, where the plan terms and conditions allow it, the premium on a 'qualifying' plan can be reduced.

However, if the premium doubles or halves in any eight year period this COULD result in the plan losing its' eligibility for relief if this change is not as a result of a change to the sum assured or as a result of a policy review on a unit linked case.

So on the current Irish Life GUARANTEED plan, because any changes to the premium will ALWAYS result in a change to the sum assured, the plan will NOT lose it's eligibility for relief as a result of a premium change .....just remember though the sum assured must always be at least 8 or 6 times the annual premium ( see previous question).

## Can the premiums re-start if a premium is missed and the contract lapses?

**No.** If a premium is missed and this causes the contract to lapse this means the contract has lost it's eligibility for relief.

Premiums can re-start to continue the life cover, but the plan will no longer be eligible for relief from Inheritance Tax.

## If the plan is cancelled will it still be eligible for relief under Section 72 if the premiums re-start?

**No.** If the plan is cancelled this means the contract has lost it's eligibility for relief.

Premiums can re-start to continue the life cover, if this option is available under the policy conditions, but the plan will no longer be eligible for relief from Inheritance Tax.

## Can the plan be assigned?

**No.** If the plan is issued in trust it cannot be assigned. If it has not been issued in trust any assignment over the plan would result in the plan losing its eligibility for relief.

## Are there any time limits or restrictions on using the plan proceeds to pay inheritance tax?

For the sum assured to be considered eligible for the relief, it must be used after the death of the life assured but not later than one year after their death.

## Where assets are left 'in Trust' for a beneficiary can Section 72 Relief be used to pay the Inheritance Tax bill?

No, Section 72 Relief can only be used where the assets are coming directly from the life assured under the plan. It cannot be availed of where the assets are disposed of by the Trustees of a Trust

# The Irish Life Section 72 Trust Form



## Does the plan have to be issued in trust?

**Yes.** Revenue Guidance Notes for ‘qualifying’ plan recommend that the plan be issued in Trust ‘with an appropriate trust instrument specifying whether all or merely some of the successors on the insured person’s death are to benefit from the proceeds of the plan’.

This will ensure that

- > The plan proceeds are used only, in the first instance, to pay Inheritance Tax. Any surplus may revert to next of kin.
- > The proceeds will be paid immediately on death to the nominated Trustee. The proceeds would not go into the estate.
- > The Trust gives flexibility in determining which beneficiaries are to benefit from the plan, and in what proportions.

There is a ‘special’ Section 72 Inheritance Tax Trust Form attached to / included with the Life Long Cover (Inheritance Tax) application form.

## Who is the Settlor?

The Settlor is the Life Assured on the plan and under our special Inheritance Tax Trust Form the Settlor is also the initial Trustee.

## Where is the Settlor's name put into the trust form?

Insert the name and address of the Settlor / Life assured here.

Details for this person will need to be inserted in the Register.

Insert the date of the application in the space provided

### Declaration of Trust

In respect of a sole life plan to be issued pursuant to Section 72 of the CAT Consolidation Act 2003

1. I, [redacted]

of [redacted]

declare that I have submitted to Irish Life Assurance plc a form of proposal dated [redacted] seeking a plan of insurance on my life, the plan sought being one that is expressed to be effected as a qualifying insurance plan' within the meaning of Section 72 of the CAT Consolidation Act 2003 (previously Section 60 of the 1985 Finance Act). In this document I refer to myself as 'the Settlor' to Irish Life Assurance plc as 'the Company' and to the said qualifying insurance plan as 'the Plan'. The expression 'trustees' shall embrace me the Settlor as initial trustee and such other persons as may hereafter be appointed to assist or succeed me.

The Settlor's details are inserted at Section 1 of the Trust Form. The name and address of the Settlor / Life Assured (i.e. First Person to be covered), along with the date the application form for cover was completed.

## What power does the Settlor have?

The Settlor has the power to appoint a new or additional Trustee and could also remove any such Trustee.

The Settlor also has the power to alter the beneficiaries during the lifetime of the plan. Irish Life can provide a relevant Deed to do this.

The Settlor has the power to nominate an ‘appointor’ or change the appointor at any time during the lifetime of the plan. Irish Life needs to be notified in writing of this change. A letter detailing the name and address of the new appointor will be sufficient to make this change, a Deed is not required.

## Who are the Trustees?

The Trustees are the legal owners of the plan and are directed to hold the plan for the benefit of the Beneficiaries.

In the Irish Life Trust Form the Settlor / life assured is the initial Trustee.

The form does not make any provision for the appointment of any additional Trustees at outset, but they may be added at any time. Irish Life must be informed in writing of any such appointment by deed of additional Trustees.

## What powers do the Trustees have?

The Trustees have the power to alter the beneficiaries during the lifetime of the plan. Irish Life can provide a relevant Deed to do this.

The Trustees have the power to nominate an 'appointor' or change the appointor at any time during the lifetime of the plan. Irish Life needs to be notified in writing of this change. A letter detailing the name and address of the new appointor will be sufficient to make this change, a Deed is not required. Irish Life can only deal with Trustees, the legal owners of the plan, in all queries / alterations to the plan. We request that we be notified in writing by the Trustees of any change to the trust.

## Who is the appointor on the death of the Settlor and what power does he/she have?

The appointor is the person who has the power to appoint a Trustee after the Settlor's death, where there is no Trustee available to deal with the contract. On the death of the life / lives assured we contact the 'appointor'

## Where is the appointor named on the Trust Form?

**Supplementary provisions**

4. The power to appoint new or additional trustees shall during my life be vested in me the Settlor.

The person with the power to nominate a Trustee on the death of the Settlor is named here. This is the Appointor

After my death that power shall be vested in

Address

Date of Birth

or in such other person as I may hereafter by notice in writing to the Company substitute therefore, or if no person is nominated, in my personal representative or representatives.

## Can the appointor be changed?

The Settlor / Trustees have the power to nominate an 'appointor' or change the appointor at any time during the lifetime of the plan. Irish Life needs to be notified in writing of this change. A letter detailing the name and address of the new appointor will be sufficient to make this change, a Deed is not required.

## Who are the Beneficiaries?

A Beneficiary is a person for whom the plan is held on Trust by the Trustees. The beneficiaries are the people who will have an inheritance tax liability on the death of the life / lives assured.

The Settlor can specify in Section 3 who the Beneficiaries of the plan will be on death and the life cover amount will be paid out to those Beneficiaries in the same proportion as their individual liability bears to their combined liabilities.

3. The trusts that as Settlor I so declare, and which as trustee for the time being I hereby assume, are to hold the Plan and the benefits which may thereunder accrue:

(a) UPON TRUST, if a benefit of the plan shall become payable by reason of my death while the Plan is still a qualifying insurance plan within the meaning of Section 72 of the CAT Consolidation Act 2003 (as amended), to pay Relevant Tax for which any of my successors is primarily accountable, in such proportions as I shall by deed appoint (and in default of and subject to any appointment), to pay Relevant Tax for which the following persons shall be primarily accountable in the proportion to which they shall be accountable.

The beneficiaries nominated here will benefit from the plan on the death of the plan owner(s). Details for the beneficiaries will need to be inserted in the Register.

Beneficiary Name	<input type="text"/>	DOB	<input type="text"/>
Role in Trust	<input type="text"/>		
Country of Residence	<input type="text"/>		
Nationality	<input type="text"/>	% Held In Trust	<input type="text"/>
<hr/>			
Beneficiary Name	<input type="text"/>	DOB	<input type="text"/>
Role in Trust	<input type="text"/>		
Country of Residence	<input type="text"/>		
Nationality	<input type="text"/>	% Held In Trust	<input type="text"/>

## Can the Beneficiaries be changed?

The Trustees have the power to alter the beneficiaries during the lifetime of the policy. Irish Life can provide you with a relevant Deed to do this.

## What would happen if no Beneficiaries are specified in the Trust form?

If no Beneficiaries are specified under Section 3(a) of the Trust form, the life cover amount will be paid out to all beneficiaries of the Estate, in their respective proportions.

Therefore, if the client wishes to provide for the liabilities of all beneficiaries of the Estate, please leave Section 3 blank. The life cover amount will then be split between all beneficiaries of the Estate in the same proportion as their liability bears to the entire inheritance tax liability. Any surplus will be paid into the Settlor's estate and will be taxable.

## What happens when the life assured dies?

On the death of the Settlor, the life cover amount will be paid to the Trustees, who will pay it over to the Beneficiaries, who will use it to pay their inheritance tax liabilities.

If the Settlor is the only Trustee, we will then either pay over to the Legal Personal Representative of the Estate or to whoever has been appointed by the nominated person under Section 4 of the trust form, as Trustee.

If there is a surplus remaining, after paying the inheritance tax of the Beneficiaries, it is paid into the Settlor's estate and will be taxable.



**If the plan no longer qualifies for relief under Section 72, the life cover amount will be paid into the Settlor's estate and will be taxable.**



**We advise that you and your client seek professional tax advice as the information given is a guideline only and does not take into account you or your client's personal circumstances.**

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## Contact us

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Irish Life Assurance plc, Registered in Ireland number 152576, VAT number 9F55923G.

ILA 14422 (REV 08-23)

