

***Finance Bill 2010 (as Published) : Information on the  
Proposed changes relating to Capital Acquisitions  
Tax, and Probate Requirements***

# Contents

1. Introduction
2. Proposed Changes to Probate Requirements
3. Proposed Changes to CAT
4. Registering for ROS
5. Benefits of E-Filing
6. Information and Support

# 1. Introduction

Finance Bill 2010 proposes to introduce significant changes to the Capital Acquisitions Tax Consolidation Act 2003. The purpose of this guide is to explain the proposed changes as they relate to Capital Acquisitions Tax (CAT) and to probate requirements.

Many of the existing processes around the administration of CAT are out of line with self-assessment principles and involve what are now considered to be excessive certification and clearances having regard to the risks involved and the alternatives available to Revenue for managing those risks. The aim of the planned changes is to simplify and streamline the administration and collection of CAT. This will involve the proposed abolition of most of the current certifications and clearances required as well as changing over to a fixed date in the tax year for filing returns and paying. In addition there will be an increased emphasis on the computerisation of CAT and the strengthening of the online filing facilities.

## 2. Proposed Changes to Probate Requirements

Currently, where a personal representative applies for a grant of probate or letters of administration to enable him or her administer a deceased person's estate, an Inland Revenue Affidavit must be submitted to Revenue in the first instance for certification that —

- Revenue have, in fact, received the Affidavit, and
- Revenue either do not require a payment on account of inheritance tax at that stage or that an adequate payment on account of inheritance tax has been made.

From mid June 2010, where the deceased person died on or after 5 December 2001, Revenue will no longer provide certification before an Inland Revenue Affidavit is submitted to the Probate Office.

Instead, the following revised procedure will apply:

- (a) An updated version of the Inland Revenue Affidavit will be used for all new applications.
- (b) The Affidavit will be prepared and sworn in duplicate.
- (c) Both Affidavits will be submitted directly to the Probate Office/District Probate Registry. Once Probate has been issued, Revenue will receive all relevant data directly from the Probate Office. There are no changes to the form and procedures in respect of applications where the deceased died prior to 5 December 2001.

Details will only be required for beneficiaries whose current benefit exceeds €20,000 and, as part of the simplification process, information to be provided in respect of prior aggregable benefits is limited to the amounts under each Threshold. (At present, additional information regarding prior benefits must be provided.)

### **3. Proposed Changes to Capital Acquisitions Tax**

#### **1. Introduction of a pay and file regime for Gift Tax and Inheritance Tax.**

Under current provisions, a tax return (on form IT 38) and payment of the tax must be made within 4 months of the valuation date of a gift or inheritance. In the context of a fully self-assessment tax, fixed deadlines have an advantage over variable due dates in particular where they align with other tax deadlines. Some of the advantages are that there is an increased awareness of liabilities needing to be reviewed at that time and compliance is therefore likely to be greater.

It is proposed in the Finance Bill that there will be a fixed pay and file date for CAT of 31 October, to align with the Income Tax pay and file deadline, with some added time being given (the same as for Income Tax) to payments/returns made via Revenue's On-line Service (ROS). All gifts and inheritances with a valuation date in the 12 month period ending on the previous 31 August will be included in the return to be filed by 31 October. That means where the valuation date arises between 1 January and 31 August, the pay & file deadline would be 31 October in that year; and where the valuation date arises between 1 September and 31 December, the pay & file deadline would be 31 October in the following year.

**Examples:**

Valuation date 21 February 2011: File IT 38 and pay tax by 31 October 2011

Valuation date 6 November 2011: File IT 38 and pay tax by 31 October 2012

In moving to a fixed pay and file date for the year ending 31 August, the period between the valuation date and the filing/payment date will increase in most cases. At its extreme, the filing period will increase from 4 months to 14 months. For example, where the valuation date is 1 September 2010, tax will not be due until 31 October 2011. However, the period between the valuation date and the filing/payment date in a minority of cases will be less than 4 months (i.e. where the valuation date arises between 2 July and 31 August). Where ROS is used the extended ROS filing date will generally provide a further period in which to pay and file.

The existing paper tax return (Form IT38) is being replaced by a newer version, which will provide for the filing of a paper return where the beneficiary is not claiming any reliefs, exemptions, etc. other than small gifts relief.

Where any other relief, etc. is being claimed, the return must be filed electronically through ROS. Where the return must be filed electronically, the extended ROS filing date will apply. The Report of the Commission on Taxation recommended that claims for reliefs, etc. should generally be claimed through an electronic platform. By

introducing a requirement to claim reliefs through ROS, Revenue and Practitioners will be able to ensure accurate returns through on-line rules, as currently applies in other taxheads. The functionality of ROS ensures that the form is simple and quick to complete as only questions that are pertinent to the return are presented for answers. As information is entered the system progressively customises the return screens that have to be completed, thus minimising the number of screens and options presented.

A major advantage of filing a return through ROS is that the system will calculate the correct CAT due based on the information entered on the electronic return. In contrast, in the case of a paper return, the filers will have to compute the liability themselves and enter the relevant figure on the return without immediate Revenue confirmation of the calculation.

An important element of any fixed pay and file regime is an appropriate sanction for those who do not comply with the pay and file deadline. In the case of income tax, corporation tax and capital gains tax this takes the form of a surcharge for the late filing of a return. The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late. A similar surcharge provision is being introduced for CAT. This is consistent with the objective of bringing CAT into line with other self-assessment taxes.

The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late, and is subject to a grading of the surcharge by reference to the length of the delay in filing as well as being subject to an overall cap on the level of the surcharge calculated as follows: A 5% surcharge applies, subject to a maximum of €12,695, where the tax return is delivered within two months of the filing date (e.g., for the year of assessment 2010, any date between 1 November 2010 and 31 December 2010 inclusive). While a 10% surcharge, up to a maximum of €63,485, will be applied where the tax return is not delivered within two months of the filing date.

## **2. Abolition of the status of CAT as a charge on property that has been the subject of a gift or inheritance in the previous 12 years.**

Currently, any tax due in respect of a gift or inheritance remains a charge on the property, unless Revenue issues a certificate of discharge or (generally) 12 years have passed since the date of the inheritance or gift. The maintenance of a charge on property inherited/gifted, and the consequent need for certificates of discharge, is not consistent with modern, self-assessment tax administration and generates a lot of additional processing and compliance costs.

Finance Bill 2010 proposes to abolish the charge on property received on a gift or an inheritance. This will eliminate the need to apply for certificates of discharge. The advantages to both the taxpayer and agent are that this will significantly simplify and speed up the return process. An additional benefit will be a simplification of conveyancing practices as it is currently standard practice in land sales for a purchaser's solicitor to require an unconditional certificate of discharge from a vendor's solicitor.

In order to deal with legacy cases (that is, the applications for certificates of discharge for inheritances and gifts taken in the 12-year period before the amendment comes into effect) the 12-year charge for such inheritances and gifts will be abolished except in cases where Revenue have already instituted proceedings for the recovery of tax on foot of the charge.

### **3. Abolition of secondary accountability.**

Currently, CAT legislation extends secondary accountability to a number of other parties (e.g. personal representatives in an inheritance situation or the donor in the case of a gift) where the beneficiary fails to pay the tax due and the person secondarily liable has control over the property passing. This secondary liability gives rise to a number of requests for certificates of personal discharge by those otherwise potentially liable in the event of default by the beneficiary.

Subject to the passing of the bill secondary accountability will be abolished for inheritances and gifts. This will eliminate a lot of processing and compliance costs relating to certificates of personal discharge. The advantage being that this will be a more streamlined system and more in line with other taxes.

In order to deal with legacy cases and prevent applications for certificates of discharge from being made by persons who are secondarily accountable for the payment of CAT after the proposals come into effect, secondary accountability will also be abolished retrospectively.

### **4. Requirement to appoint an Irish-resident “agent” who will be responsible for pay and file procedures where beneficiaries are non-resident.**

One area of concern relates to the payment of CAT by non-resident beneficiaries. To address this situation, an Irish resident personal representative taking out probate or letters of administration will be appointed as an “Agent” of a non-resident beneficiary entitled to a benefit exceeding €20,000. The agent will be responsible for the pay and file requirements of the non-resident beneficiary. In this regard, the agent will be entitled to retain funds adequate to meet the CAT liability from any amounts due to the beneficiary under the control of the agent. The liability of the agent will be restricted to the extent of the funds available for distribution to the beneficiary.

Where there is no Irish resident personal representative, the personal representatives must appoint a Solicitor holding a practicing certificate in the State as agent prior to seeking probate or letters of administration.

### **5. A requirement to e-file where certain Relief’s are being claimed.**

Finance Bill 2010 provides that e-filing of the IT38 will be required where reliefs or exemptions (other than the exemption for small gifts) are being claimed by a beneficiary of a gift or an inheritance. E- Filing is the electronic filing of returns through Revenue’s online service (ROS).

The Report of the Commission on Taxation recommended that claims for reliefs, etc. should generally be claimed through an electronic platform. CAT is a complex tax resulting in many calculations and adjustments. As such, much of Revenue's administration of CAT revolves around computational adjustments. By introducing a requirement to claim reliefs through ROS, Revenue will be able to ensure accurate returns through on-line rules, as currently applies in other taxheads. Revenue will also be able to gain valuable information, which can be used in evaluating the cost and effectiveness of such reliefs and providing more detailed analysis to the Department of Finance, as part of the overall budgetary process.

ROS will allow for the filing of a CAT return at any stage during the year and will compute the correct liability based on the information in the return. This will be of benefit to practitioners who will be able to advise their clients of the correct tax due at any time of the year and the extended ROS filing dates will apply in those cases.

Most tax agents and many solicitors, with the introduction of e-stamping, will already be registered for ROS but for details of how to register and the benefits of e-filing please see sections 4 and 5 of this guide.

## **6. The inclusion of reminder questions in Forms 11/12 and CG50**

Provision is being made to include an enabling provision to allow for "reminder" questions in forms 11/12 and CG50. In a self-assessment environment, these questions will be designed to act as prompts for the filing of CAT returns in relevant cases, especially with the same pay and file dates applying to these taxes.

The proposals do not provide for forms IT38 and forms 11/12 to be incorporated into a single return and Revenue expect that CAT returns will, in most cases, continue to be filed by Practitioners who are involved in the administration of estates, etc.

## **7. Future Developments**

The Bill also contains an enabling provision which will allow both Revenue and the Courts Service put in place a common platform for the electronic filing of the Inland Revenue Affidavit. However, there are a number of issues to be resolved before this can come into operation.

Revenue is committed to working with Practitioners through TALC (Taxation Advisory Liaison Council) which includes representatives from the taxation, accountancy and legal sectors.

## 4. Registering for ROS

ROS registration is a simple process but, because of the strict security requirements, the process includes postal correspondence and may take a week or two to complete. Therefore, you are advised to start the process in good time before you plan to use the system.

There are three steps to registering for ROS that culminate in your receipt of a ROS Digital Certificate and access to the ROS system.

### **Step One** – Applying for a ROS Access Number (RAN)

To begin this process you will need to have your firm's tax registration number (and the tax type to which the number refers i.e. VAT number, Income Tax number, etc) to hand. Once you have completed the application on the ROS webpage, the system will generate a RAN, which you will receive through the post in the following days.

### **Step Two** - Applying for a ROS Digital Certificate

Once you have received your RAN in the post, you can proceed to apply for a ROS Digital Certificate on the system. This will result in the system generating a ROS password, which you will receive through the post in the following days.

### **Step Three** - Downloading the ROS Digital Certificate

The final step allows you to use the password to retrieve and download your ROS Digital Certificate to your computer. You are now registered in ROS and ready to file and pay on line.

For detailed guidance on the ROS registration process please go to <http://www.revenue.ie/en/online/ros/index.html> To commence the process of registering for ROS please go to <http://www.ros.ie/PublisherServlet/info/setupnewcust> to complete the three-step process.

## **5. Benefits of E-Filing**

### **Improved Customer Service**

Revenue can provide a more efficient, timely and cost effective service to our customers. Access to your own Revenue account from your own PC with 24 hour, 365 day access to ROS. There are calculation facilities to assist customers with determining their tax liability as well as built-in electronic acknowledgments of returns and payments.

### **Faster Processing Time for Returns and Payments**

By eliminating mailing, handling, and keying in of returns, there will be faster processing of returns and payments. This coupled with the abolition of certificates of discharge will significantly reduce processing times and compliance costs.

### **Quicker completion of Returns**

In ROS the system progressively customises the return as the filer enters data and selects options, obviously no such option is available in a paper return, With the electronic return the filer is alerted of certain errors and must correct the return before being able to proceed and the tax due will be calculated automatically. This quicker and easier completion of returns will reduce compliance costs.

### **Extended Pay and File Date**

An advantage of e-filing over paper returns will be an extended pay and file date similar to Income Tax. For example 2008 Income Tax returns filed online had an extended pay and file date of 16<sup>th</sup> of November 2009 instead of the 31<sup>st</sup> of October.

### **Working Off line**

The ROS off-line facility allows the IT38 return to be downloaded onto a computer or office computer network for local use off line. This means that you can use the off-line system to begin to 'build' the return in advance of filing. In addition, the off-line facility allows you to check the returns and payments on line with your firm's approval process and make any necessary corrections before uploading the approved return and transmitting it on line to Revenue, via ROS.

### **Help Text**

Each IT38 screen will contain a link to a comprehensive on-line help text facility that sets out clearly the requirements for completing successfully every field on the screen. In addition to providing assistance in completing the return on line, the help text provides useful background information on CAT rules, regulations and practices.

### **Access and Permission Rights for Practice Staff**

ROS functionality is very flexible and matches most office practices. Within your

firm, different people may be involved in different stages of filing a return. When you apply for and retrieve the ROS digital certificate, you become the ROS administrator and you can assign different ROS permissions to anybody working in the firm. You can do this by assigning a ROS subcert to other people within the firm. As the ROS Administrator for your firm, you can permit and enable ROS subcert holders to carry out listed tasks (“file return”, “view only”, etc). This means that each person to whom you assign a ROS subcert can perform e-filing tasks from his/her own computer.

### **Payments**

As a ROS customer, you will be able to pay the tax due through Revenue’s on-line service. This is a simple and effective way of ensuring that the appropriate tax is paid on time and assigned to the correct customer.

### **Records**

The material in your ROS Inbox is a permanent record that can be archived by you according to your future needs.

### **Validation of Key Details**

Usefully, the electronic system will validate certain information automatically, such as the tax reference numbers entered for each party, before the return is filed. It will show an error message where invalid data has been entered allowing you to make the necessary corrections before completing and filing the return.

## **6. Information and Support**

### **ROS Technical Assistance**

LoCall: 1890 20 11 06 for assistance from the ROS Technical Helpdesk. This helpdesk will assist with any technical issues concerning ROS. You can also e-mail ROS at [roshelp@revenue.ie](mailto:roshelp@revenue.ie)

### **Revenue Website**

Information relating to CAT can be found on the Revenue website at: [www.revenue.ie](http://www.revenue.ie)

For further clarification on the changes outlined in this guide email [CATReview@revenue.ie](mailto:CATReview@revenue.ie)