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Overview of Key CAT Compliance Obligations in 2020

Introduction

The current rate of capital acquisitions tax (CAT) is 33%, but with the costs of the business/employee supports mounting as we move into the autumn months, in the author's view, the Government may look to increase tax and/or reduce the reliefs that are available. The cost for taxpayers of missing key CAT deadlines may include significant interest, surcharges and penalties.

There are a number of compliance pitfalls for beneficiaries of gifts/inheritances that need to be borne in mind when either making *inter vivos* (lifetime) gifts or passing assets under a will or through a discretionary trust. I discuss these in turn below, including some of the changes introduced by Finance Act 2019.

CAT Rate and Group Thresholds

Each beneficiary is entitled to receive a tax-free amount up to the certain thresholds depending on the relationship between the donor and the beneficiary, with the excess amount being subject to CAT at 33%. The current thresholds for gifts/inheritances received on or after 9 October 2019 are:

- Group A (gifts and inheritances received by children from their parents) €335,000,

- Group B (relatives such as siblings, grandparents, nephews/nieces) €32,500 and
- Group C (all persons who do not come within Group A or Group B, the stranger threshold) €16,250.

There is no CAT between spouses or couples registered as a civil partnership.

It had been hoped that the Group A threshold would be increased , particularly where the family home was involved, but this is unlikely owing to Covid-19. It is worth noting that in the UK, where an estate is worth less than £2m and a family home is being inherited by children, the estate threshold is increased to £500,000.

The tax-free group thresholds and the rates of tax that apply when you receive a gift are determined by the date of the gift. Under an inheritance, these rates and thresholds are determined by the date of death and not the valuation date. The valuation date determines the pay and file date for CAT purposes, and it may be quite different from the date of the inheritance.

Valuation Date

It can be difficult to determine exactly when the valuation date is for CAT purposes. This date is important as it determines the following:

- As outlined below, the valuation date is the date on which CAT is payable and the Form IT38 is due for submission to Revenue.
- CAT at the current rate of 33% is charged on the market value of the property comprised in the gift or inheritance on the valuation date.
- For the purposes of agricultural relief, the agricultural property must form part of the gift or inheritance at the valuation date, as well as at the date of the gift or inheritance.
- The "farmer test" for agricultural relief is applied on the valuation date.
- If tax is being paid by instalments, the first instalment and interest is due on 31 October immediately after the valuation date.

For gifts, the valuation date is quite simple – it is the date on which the gift is received – but for an inheritance, it is the earliest of these dates, as outlined in s30(4) CATCA 2003:

- the earliest date on which a personal representative or trustee or the successor or any other person is entitled to retain the subject matter of the inheritance for the benefit of the successor or of any person in right of the successor or on that successor's behalf;
- the date on which the subject matter of the inheritance is so retained; and
- the date of delivery, payment or other satisfaction or discharge of the subject matter of the inheritance to the successor or for that successor's benefit or to or for the benefit of any person in right of the successor or on that successor's behalf.

As can be seen, this definition is quite complex, and as a general rule of practice, the valuation date tends to be the date of the grant of probate or letters of administration.

Pay and File Date

Currently, every beneficiary is required to make a CAT return (Form IT38) where benefits of at least 80% of the relevant group threshold have been received by that beneficiary. A Form IT38 must also be filed if claiming agricultural or business asset relief or other CAT reliefs (such as dwelling-house exemption, in the case of inheritances).

All Form IT38s must be submitted online through either Revenue Online Service (ROS) or myAccount (for PAYE beneficiaries and for business customers who do not have a ROS digital certificate). The only cases in which a paper return (Form IT38S) can be submitted to Revenue is where no relief/exemption or credit is being claimed apart from the small gift exemption of €3,000 and the benefit being taken is an absolute interest without conditions or restrictions.

During the last recession, the Government changed the pay and file dates for CAT (Finance Act 2010) to bring it in line with the income tax regime. All gifts and inheritances with a valuation date in the 12-month period ending on the previous 31 August are required to be returned by 31 October of that year; for example:

- valuation date 21 April 2020: file return and pay tax by 31 October 2020 and
- valuation date 2 October 2020: file return and pay tax by 31 October 2021.

Revenue eBrief No. 9/2020 extended the 2020 ROS return filing and tax payment date for customers liable to CAT. For beneficiaries who received gifts or inheritances with valuation dates in the year ended 31 August 2020 and who both file a CAT return and make the appropriate payment through ROS, the due date is extended to Thursday, 12 November 2020.

Payments can be made online using:

- a debit card or credit card,
- a "single debit instruction", which is a once-off debit using a bank account capable of accepting a direct debit, or
- a ROS debit instruction, for ROS customers.

Revenue eBrief No.143/2020 clarifies Revenue's online payment systems in relation to CAT, and customers will now be able to make payments under certain tax heads for which they are not registered, such as CAT, using a debit card or credit card or a single debit instruction.

If you are a non-resident beneficiary and do not have a SEPA-reachable bank account, you can pay by electronic funds transfer to the Office of the Revenue Commissioners – UTD EFT – Public Bank Account[1]. The non-resident beneficiary must include their name and registration number in the bank's narrative box to ensure correct and prompt allocation of funds. As soon as the payment is made, an email should be sent to moneytrans@revenue.ie with the following details:

- customer name,
- personal public service number (PPSN),
- amount of payment,
- whether the payment is for gift or inheritance tax and
- period covered by the payment.

Charges for Late Filings

Finance Act 2010 introduced a surcharge for those who do not comply with the filing deadline of 31 October. A 5% surcharge applies, subject to a maximum of €12,695, where the return is delivered within two months of the filing date (e.g. for the year of assessment 2020, any date between 1 November 2020 and 31 December 2020, inclusive). A 10% surcharge, up to a maximum of €63,485, applies where the return is not delivered within two months of the filing date.

For every day that the CAT liability remains unpaid, there is a daily interest charge of 0.0219%. Separate interest rates apply where instalment arrangements are entered into in relation to agricultural or business property, with a reduced daily interest rate of 0.0164% for late payments.

Section 54 CATCA 2003 provides for the payment of CAT by means of 60 equal monthly instalments where a beneficiary takes:

- an absolute interest in immovable property,
- agricultural property consisting of land, buildings and farm machinery or
- relevant business property or a limited interest taken in any property.

Beneficiaries may opt for this method of payment when completing their self-assessment tax return. Where the option to pay by 60 monthly instalments is exercised, the first

1 https://www.revenue.ie/en/gains-gifts-and-inheritance/completing-your-gift-or-inheritance-tax-return-it38/how-to-pay-your-cat-online.aspx

instalment is due and payable on 31 October immediately following the valuation date.

Where the inheritance or gift comprises both personalty (cash, stocks/shares, bank accounts etc.) and real property (land, buildings), any tax on the former must be paid immediately (except in the case of a limited interest), and the option of paying by statutory instalments may be availed of to discharge the liability on the latter. Where a person takes a limited interest in property and dies before the five-year statutory instalment period has expired, any instalments not due are written off and tax paid may be recoverable as an overpayment. This applies whether or not instalment arrangements were entered into.

Payment by non-statutory instalments

The Revenue's Tax and Duty Manual "Capital Acquisitions Tax – Collection and Enforcement Guidelines" provides for a method of payment by instalment on a concessionary basis in exceptional circumstances where the tax liability cannot be paid without causing excessive hardship. In arriving at a decision to allow non-statutory instalments, a case is looked at on its merits taking the following into account:

- the nature of the gift or inheritance – where, for example, a sizeable part of the benefit comprises liquid assets, an instalment arrangement is not normally approved; and
- the financial circumstances of the beneficiary.

Even where an instalment arrangement is entered into with Revenue, interest continues to accrue on the unpaid tax. Payments are applied against interest in the first instance, and payments must be made on the agreed due date.

Revenue Enquiries Timeframe for CAT Returns

Finance Act 2018 made a significant change in relation to the standard four-year time limit after receipt of a CAT return for Revenue officials to make enquiries and authorise inspections. It is important to note that this amendment is not limited to gifts/inheritances taken on or after 19 December 2018 (the date of enactment of Finance Act 2018) but extends to gifts or inheritances taken before that date.

Essentially, this amendment states that where conditions for a relief must be satisfied for a specified period after the relief is claimed, the four-year period starts on the latest date on which all of the conditions were required to be satisfied. It is recommended, therefore, that records be kept for at least ten years – for example, where agricultural property relief is claimed, the four-year period will start seven years after the valuation date; and where CGT/CAT offset is claimed, the four-year period will start two years after the date of the gift.

Non-residents and CAT

All beneficiaries whether resident or non-resident are obliged to file CAT returns (and pay CAT if any) where 80% of their relevant lifetime thresholds have been exceeded. However, special rules apply to ensure that non-resident beneficiaries file CAT returns and pay their tax when receiving an inheritance of in excess of €20,000 (if receiving a gift from an Irish-resident donor or Irish-situate property). This is so as to ensure that non-residents file their CAT returns where 80% of their lifetime threshold has been exceeded and any liabilities are paid to the Revenue (if owing). Non-resident beneficiaries who do not have a PPSN must apply for one to the Department of Employment Affairs and Social Protection using a Form REG 1 to enable a Form IT38 to be submitted to Revenue. This should be done as soon as the probate process begins as a PPSN can take a couple of weeks to obtain.

Where the personal representative or executor of the estate is Irish resident, that person can be held personally liable for the CAT of a non-resident beneficiary if the non-resident beneficiary fails to pay and file. Exposure to the CAT payable is limited to the amount of assets under the personal representative's control to which the beneficiary is entitled. To allow the personal representative to discharge this onerous obligation, such personal representative has the power to sell the assets to which the non-resident beneficiary is entitled.

Interaction with the UK and the US

In contrast to Ireland, inheritance tax in the UK is a tax on the estate of the person who has died. There is normally no inheritance tax to pay if either the value of your estate is below the £325,000 threshold or you leave everything above the £325,000 threshold to your spouse/civil partner, a charity or a community amateur sports club. If you give your home to your children (which include adopted, fostered and stepchildren) or grandchildren, your threshold can increase to £500,000.

The standard rate of inheritance tax in the UK is 40%, and it is charged only on the part of the estate that is above the threshold. The estate can pay inheritance tax at a reduced rate of 36% on some assets if the will leaves 10% or more of the "net estate" to charity.

In the UK, inheritance tax must be paid by the end of the sixth month after the person has died; for example, if a person died in January 2020, the inheritance tax must be paid by 31 July 2020. However, in the same circumstances in Ireland, the grant of probate or the valuation date may not have occurred until September/October, in which case Irish tax would not have to be paid until 31 October of the following year. HMRC will charge interest if the inheritance tax is not paid by the due date.

The US, by contrast, offers a very generous $11,580,000 exemption for estate tax returns, so most relatively simple estates do not generally require the filing of an estate tax return. However, this applies only to US residents and US citizens. For estates of decedent non-residents who were not citizens of the US, if the date-of-death value of the decedent's US-situated assets exceeds the filing threshold of $60,000, the executor must file a Form 706-NA for the estate. The computation of the tax requires that you state the total value of assets situated in the US and the total value of assets situated outside the US.

Generally, the US estate tax return is due nine months after the date of death. A six-month extension is available if it is requested before the due date and the estimated correct amount of tax is paid before the due date. The gift tax return is due on 15 April following the year in which the gift was made.

Recent Changes: Statement of Affairs (Probate) Form SA.2

The new Statement of Affairs (Probate) Form SA.2 is a new online version of the Inland Revenue Affidavit (CA 24 Form). It is designed to be more user friendly and more interactive with options to add multiple beneficiaries or assets and will have auto-populate functionality. Once completed and submitted online through ROS, Revenue will then automatically send an acknowledgment document called a Notice of Acknowledgment (Probate). When probate is granted, the Probate Office will electronically notify Revenue which will facilitate initiation of Revenue's CAT compliance process. Mark Bradshaw in his recent article in the Irish Tax Review has given a detailed analysis of the development Revenue's Online Inland Revenue Affidavit.[2]

Recent Changes: Revenue eBrief No. 65/2020

Revenue's eBrief 65/2020 updated the relevant Revenue manual for the amendment included in Finance Act 2018 to the exemption from the two-year holding period (where claiming a credit given for CGT against CAT arising on the same event under s104 CATCA 2003) requirement in the case of life assurance policies. The "appropriate tax" due on the death

2 Mark Bradshaw, Development of an Online Inland Revenue Affidavit (CA24), Irish Tax Review 33/2 (2020).

of a life assurance policy-holder is treated as an amount of CGT paid for the purposes of s104 CATCA 2003. As a life assurance policy must be cashed in and cannot be retained, it is not possible for the beneficiary to retain the property as required, and consequently the two-year clawback provision is disapplied in such instances.

The eBrief also advises that the relevant manual dealing with the dwelling house exemption has been updated as a result of a High Court judgment (in the *Deane* [2018] IEHC 519 case) and Finance Act 2019, which amendments. The amendment ensures that where a successor inherits more than one residential property from a deceased person, the exemption does not apply. Very simply, the "test" for beneficial interests held in any other dwelling-houses is now applied both at the date of the inheritance (date of death) and throughout the period up to the valuation date for the inheritance.[3] This ensures that all dwelling-houses that are inherited as part of the same inheritance/estate are taken into account in determining whether a successor has an interest in another dwelling-house.[4]

Discretionary Trust Tax Pay and File Dates

The following discretionary trust tax (DTT) charges apply to trust assets:

- an initial once-off 6% charge and
- an annual 1% charge on 31 December in each year that the trust is in place.

The initial 6% charge arises on the disponer's death or, if later, when all of the principal objects of the trust have reached the age of 21. It is payable within four months of the valuation date of the inheritance deemed to be taken by the trustees. In the case of a residuary estate passing into a discretionary trust under a person's will, the valuation date will normally be the date of the ascertainment of the residue of the estate, and the 6% initial charge will be payable within four months of that date. The first annual 1% charge will not be payable until the following year.

Where the administration of an estate lasts for a period of years, a number of annual 1% charges may have arisen before the valuation date for the initial 6% charge arises. In these situations, the valuation date for any of the accrued annual 1% charges will be the valuation date for the initial 6% charge. Discretionary trust tax is payable, for the initial 6% charge and for any accrued 1% charges, on the value of the trust property at the valuation date for the initial 6% charge.

Claims for refunds of DTT should be made within the four-year period starting on the later of the valuation date and the date of payment of the tax concerned where that tax has been paid within four months of the valuation date.

Payments of Discretionary Trust Tax

The Form IT32 is the self-assessment return for the 1% initial DTT. It must be delivered by the accountable person, i.e. the trustees, or an agent acting on their behalf. The Form IT4 is the self-assessment return for the 6% once-off charge. Again, it must be delivered by the accountable person, i.e. the trustees, or their agent. Interest will not be charged if this not done within the time limits above; however, Finance Act 2018 introduced provisions to ensure that discretionary trust tax returns are covered by surcharge provisions (discussed above) if it is not filed within four months of the relevant valuation date.

Discretionary trust tax can be paid by electronic funds transfer (EFT) to the Capital Taxes No. 3 Public Bank Account, Allied Irish Banks, 7–12 Dame Street, Dublin 2, IBAN: IE32 AIBK 932086 16946049, BIC: AIBKIE2D. As

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3 Further information can be found in the article by Cormac Brennan, "Finance Act 2019: Dwelling-House Exemption from CAT", *Irish Tax Review*, 33/2 (2020).

4 See Revenue's Capital Acquisitions Tax Manual – Part 24 (updated April 2020).

soon as a payment is made by EFT, an email should be sent to cateftpayments@revenue.ie with the following details:

- solicitor's or accountant's name and address,
- settlor's or disponer's name,
- file reference and name of trust,
- period covered by the payment and
- amount of the payment.

DTT can also be paid by cheque or bank draft with the above details to The Revenue Commissioners, Capital Acquisitions Tax Unit, Block F, Athy Business Campus, Castlecomer Road, Athy, Co. Kildare, R14 FE81.

Conclusion

All beneficiaries should be aware of their filing obligations when receiving either a gift or an inheritance, as there are a number of significant financial penalties should the relevant deadlines be missed. This is particularly important where there are non-resident beneficiaries, as personal public service numbers may need to be applied for in a timely manner.

Read more on taxfind From Irish Tax Institute *The Taxation of Gifts and Inheritances, Finance Act 2019; Law of Capital Acquisitions Tax, Stamp Duty and LPT, Finance Act 2019*