Pass it on: transferring assets to your family

If you are planning to leave assets to your family or others after your death, or to give gifts during your lifetime, then estate planning and capital acquisitions tax are things you need to consider and to plan for, write Mary Goodman Mehigan QFA and Declan Gahan QFA

In the past, capital acquisitions tax (CAT) was perceived as a tax of the wealthy. But with reductions in the amount you can give or pass on to an individual (tax-free thresholds), together with increases in the CAT rate (33%), it now has become a middle-class problem.

Many people start looking at estate planning as a way to save on tax and avoid legal problems. However, we advise that you should never use tax as the driving force behind any personal or commercial decision. You should firstly consider your intentions, what you would like to happen to your assets on death and what is practical given your family or business circumstances. Once you have set out your intentions, we can look to minimise any problems and plan for any tax impacts.

HAVE YOU MADE A WILL?

The best way to set out your intentions, and the first step in formulating your overall plan, is to make a will. A survey last year showed that 75% of adults do not have a will. Making a will is the most important step in efficient estate planning.

It can help to maximise the use of the current tax-free thresholds, identify any inheritance tax liabilities and, in general, can help to highlight how financially prepared your family would be in the event of your unexpected death. A will legally binds your wishes. Without it, the Succession Act 1965 would dictate what happens to your assets on death.

Once a will has been made it should be reviewed regularly, as personal, business and financial circumstances change and your plan and your will need to reflect these changes.

Having set out your intentions, you may decide to transfer some of your assets now or leave everything as part of your estate.

Either way, it is important to assess if the beneficiary will be liable to CAT and to establish what steps can be taken, with proper planning and advice, to mitigate any tax liability.

As CAT is quite a complex tax, we give a brief outline of current legislation below. Professional advice should always be sought to ensure any arrangement put in place is appropriate to your individual circumstances.

WHAT IS CAPITAL ACQUISITIONS TAX?

CAT is the tax charged when a gift or inheritance is received. It comprises three taxes:

1. Inheritance tax
A tax which arises when an individual (the successor) receives assets by way of an inheritance when a person dies (the disponer);

2. Gift tax
A tax which arises when an individual (the donee) receives assets by way of a gift from another person (the disponer); and

3. Discretionary trust tax
A tax on a trust set up where assets are put into trust by a disponer, held by trustees for beneficiaries.

WHAT IS TAXABLE?
Any asset is liable to CAT if:
- The asset is located in Ireland; or
- The asset is located abroad and the disponer and the successor/donee is resident or ordinarily resident in Ireland.

Assets include: investments, cash, land, property, jewellery, a car etc.

WHO IS TAXABLE?
- It is the person receiving the gift or inheritance (the successor/donee) who is liable for paying the tax;
- It is not the person providing the gift or inheritance;
- It is a self-assessment tax – keep a record of what you receive.

CAT is a self-assessed tax. Beneficiaries make their return through the Revenue Online System (ROS). If an inheritance is received between January 1 and August 31, the beneficiary must file and pay by October 31 in the same year. If an inheritance is received from September 1 to December 31, the beneficiary must file and pay by October 31 the following year. In essence, your beneficiaries could be left in a situation where they have less than three months to pay any tax liability. This could be a problem if your assets were illiquid or may take more time to sell, ie. property. Would your beneficiaries have the funds to pay a tax liability? Another important point to consider is that surcharges apply for late payment (up to 10% of tax liability).

TAX–FREE THRESHOLDS
Tax-free thresholds have reduced significantly in recent years, giving more and more people a tax liability on their inheritance.
Tax is calculated according to the total of all gifts and inheritances received from all sources since December 5, 1991.
The threshold amounts vary depending on the relationship between the beneficiary (person receiving the gift) and the disponer (the person providing the gift or inheritance). You will see in Table 1 the erosion of the amount a beneficiary can receive tax free since 2008.

Group	Relationship	Group threshold 2008	Group threshold 2015	
A	Son/daughter	€521,208	€225,000	(-57%)
B	Parent/brother/sister/nephew/niece/grandchild	€52,121	€30,150	(-40+%)
C	Relationship other than A or B above (including common-law spouses/co-habitants)	€26,060	€15,075	(-40+%)

Table 1: CAT rate has increased significantly in recent years. It is currently 33%. The tax take for CAT in 2013 was €277 million.

EXEMPTIONS
Certain reliefs and exemptions from CAT apply to certain types of assets. All reliefs have specific conditions, which is why it is important to seek professional advice at all times. The following is a synopsis of the main exemptions/reliefs.

SPOUSE OR CIVIL PARTNER EXEMPTION
Gifts or inheritances received by one spouse or civil partner from another are exempt. However, it is important to highlight that co-habitants are treated as 'strangers', as outlined in Group C above for CAT purposes, ie. their tax-free threshold is €15,075.

SMALL GIFT EXEMPTION
CAT legislation allows for an exemption from gift tax for the first €3,000 of any gift taken by a beneficiary from any individual (donor). The €3,000 is an annual limit. What this means is that a beneficiary can receive up to €3,000 tax free in any one year from any donor, or even multiple donors, and this gift will not impact on their appropriate tax-free group threshold. Similarly, an individual (donor) can give multiple gifts of €3,000 to multiple beneficiaries every year. No familial relationship is required for this exemption.

AGRICULTURAL RELIEF
Many vets benefit from and utilise 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 six years.
A 'farmer' is defined as an individual in respect of whom at least 80% of his/her assets, after taking a gift or inheritance, consist of agricultural property on the valuation date.
'Agricultural property' is defined as meaning agricultural land, pasture and woodland situated in a member state of the EU, together with farmhouses and other buildings, livestock, bloodstock and farm machinery.
In addition to the relief available on the value of farmland, buildings and stock, agricultural relief may be claimed where a gift of, say, cash from an investment-based estate is gifted to a qualifying farmer on the basis that the asset is converted to qualifying agricultural property within two years of the date of the gift or inheritance.

What this means, in effect, is that the asset gifted does not have to be agricultural property but, once the gift is made, subject to it being converted to qualifying agricultural property, the relief can still be claimed on the gift or inheritance where the recipient is a qualifying farmer.

Agricultural property which fails to qualify for agricultural relief can qualify for business relief.

BUSINESS RELIEF

Business relief can provide a similar reduction of 90% in the taxable value of certain businesses or private companies, where both the business and beneficiary meet the qualifying conditions, including certain ownership/control tests.

The relief will only apply to qualifying business assets which are assets used in the course of the qualifying business activity. Relief can also be extended to certain assets owned personally by the disponer that were used in the course of the business.

FAMILY HOME RELIEF

A complete exemption from gift and inheritance tax is available on the value of certain dwellings with up to an acre of land, where the beneficiary meets certain conditions which ensure that the property was, and continues to be, their home.

The beneficiary must:

- Have occupied the house as their sole dwelling for three years prior to the date of the gift or inheritance;
- At the date of the gift or inheritance, not hold an interest in any other dwelling house;
- Continue to occupy the house as their main residence for six years after the date of the gift or inheritance.

The relief is not restricted to parent/child relationships. It is available between any two individuals. Because of the reference to 'family home', this relief is often misunderstood.

GIFTS TO FIRST-TIME BUYERS

There has been much comment in the media recently about how Revenue intends to tax gifts made by parents to their children towards the purchase of their first home. If you plan on giving a gift to your son or daughter to help them purchase a property, it is important to get legal advice regarding the tax impacts of such a gift.

As stated above, the amount of tax to be paid depends on the total value of gifts or inheritances a child receives from their parents during their lifetime. At present, children are entitled to receive a maximum of €225,000 in total from their parents (not from each parent), including gifts and inheritances, tax free.

LIFE ASSURANCE RELIEF

You are entitled to take out a life assurance plan, specifically to pay gift or inheritance tax, where the funds paid out on the plan will not be subject to CAT, provided they are actually used to pay the tax bill.

This is to encourage you to plan ahead and to ensure that the funds are available to protect your family from any tax liability.

CONCLUSION

Estate planning and CAT are complicated subjects. Which assets to transfer, how to do it in the most efficient way, and when to do it – now or as part of the estate – are the key questions to be teased out as part of your financial life planning.

If you would like further information to clarify any of the topics discussed here, please talk to us in Veterinary Ireland Financial Services.

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