OHT Guide

CAT Valuation Date

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What is the Valuation Date?

CAT compliance is firmly centred on the concept of the "valuation date", which determines when the benefit needs to be valued, and when the return needs to be filed and the CAT paid. The rules on when a valuation date falls are wide-ranging and flexible, so that they can take account of all the possible permutations and combinations in relation to a gift or inheritance. Legislation that is geared towards ensuring flexibility does not always provide a simple rule to follow and the valuation date legislation, and S. 30 Capital Acquisitions Tax Consolidation Act 2003 (CATCA 03) is no exception.

Each part of a benefit can have a separate valuation date, which is essentially the point in time at which the asset can be retained (i.e. identified and allocated to the beneficiary). The legislation refers to the concept of retainer, which was imported from estate duty (the tax that preceded CAT).

Specific Rules

Section 30 CATCA 2003 sets out a number of clear-cut specific provisions followed by a general rule. The specific rules provide that where assets pass in circumstances where the gift is perfected by a death, the valuation date will be the date of death. The classic example of this is a *donatio mortis causa* – i.e., a gift made in contemplation of death, where the person giving the gift is on his/her deathbed and makes a gift to take effect on death. If the death duly occurs, the beneficiary takes the benefit so the death "perfects" the gift.

Another classic example is the case of a donor who had made a lifetime gift but retained a power of revocation. During the donor's lifetime, while he/she has the right to revoke the gift, the beneficiary is treated for CAT purposes as not having taken the property. On the donor's death, if the right to revoke dies with the donor, a benefit passes for CAT purposes.

The valuation date for a gift is clear-cut, as the beneficiary is entitled to the asset from the date of gift, and therefore the valuation date is the date of gift. As the valuation date for a gift is generally straightforward this article will mainly focus on the more complex area of inheritances.

General Rules

The category that most inheritances fall into is the general one that provides that the valuation date is the earliest of three options, i.e. the date on which the personal representative was entitled to retain the benefit, the date on which he did retain the benefit, or the date of payment or other effective delivery.

In *Lord Advocate v Wotherspoon's Trustees* (1930) SLT82, Fleming LJ considered what "retainer" means and gave the following guidance:

"Retainer is something different from the holding or retention of a trust

estate by the trustees in order to carry out the trust purposes. It must be a retainer in the right and for the benefit of the legatee – something of an analogous character to actual delivery or payment. It is an essential feature of the retainer that the legatee should be entitled either to demand payment or delivery or, at all events, should have the beneficial enjoyment of the legacy through the hands of the trustees. An obvious case of retainer is the holding by an executor of a legacy on account of a personal disability on the part of the legatee to give a discharge therefore."

The issue is how to identify when the personal representative is *"entitled to retain ... the inheritance for the benefit of the successor …."*

Retainer may be *"analogous … to actual delivery or payment"* but the point of *"retainer"* will often be different to the actual date of delivery or transfer of an inheritance to a beneficiary. In many cases (e.g. if the personal representative is secondarily liable for CAT) the benefit will not be released until after the CAT is paid and the one month letter required to the secondary liability (see here for more details) has been sent, and the one month time limit has expired.

If the benefit can be identified and passed over but is retained until the secondary liability has been dealt with, the point of retainer will be the point at which the benefit is, or can be, allocated to the beneficiary, not the later date when the personal representative is willing to distribute.

The Revenue CAT Manual explains "retainer" as follows :-

> *"Retainer: Is the act of identifying the benefit to be taken by the successor -even if there are technicalities to be fulfilled before actual delivery."*

Date of Death Valuation Dates

The valuation date for the benefits needs to be identified as early as possible to ensure that the CAT is paid on time. In some cases the valuation date may arise immediately on death. If the death occurs near the end of a CAT year (e.g. in August) then the tax may be due for payment shortly afterwards. In the most extreme case, if a death occurs on 31 August and this is the valuation date the beneficiary will only have 2 months to calculate and pay the CAT, and prepare and file the return.

The date of death will be the valuation date if the beneficiary has an immediate entitlement to the property, which may occur on the inheritance of a joint tenant by survivorship, or if a remainder interest is taken on the death of a life tenant. The benefit passes on the death by operation of law.

A valuation date can also arise at date of death if the beneficiary is in possession from the date of death – for example, if a residence passes to a life-partner who is already living in it, or a business (such as a farm) passes to a beneficiary who has an active role in running it for the deceased, and who begins to run it for his/her own benefit from the date of death. The dividing line between a beneficiary entering into a property as a caretaker to ensure that its value is maintained while the estate is being administered, and a beneficiary who is inheriting a business taking it over on the death, may not be easy to identify. Income arising on an asset should be paid into the executor's account if the estate is keeping control of the asset.

The Date of Death "Trap"

The pay & file date for CAT is 31 October following the end of the relevant CAT year (which runs from 01 September to 31 August). There will be sufficient time for the calculation and payment of CAT in most cases.

However a date of death valuation date can give rise to issues.

If a deceased dies on 01 August and there is a date of death valuation date the CAT will fall due 3 months later (on 31 October). It is not unusual for beneficiaries to be unclear on the title to property (joint names or tenants in common). In addition clients may not seek professional advice on an estate until some time after the death. A beneficiary may not have the information to establish that there is a CAT liability until after the pay and file deadline.

The file and pay deadline for a date of death valuation date can easily be missed, giving rise to an exposure to interest and penalties. The first task when advising on an estate should be to check whether any of the benefits passing could have a date of death valuation date.

Selection of Valuation Date

The fact that the valuation date is not clear-cut in all cases means that the beneficiary may have to select between two dates, one of which may suit better from a tax perspective. Generally, the selection of a valuation date will have an impact on the level of tax if an asset is rising in value, falling in value, or is volatile with a value that changes from day to day.

Multiple Payments

The Revenue Guidance Notes on s30 indicate that if advances are made out of an inheritance, each part payment is treated as being "retained" on the date of payment as if it were a separate inheritance.

Example

Adam receives the residue under Barry's Will and receives shares worth €100,000 on 1 March 2004, cash amounting to €10,000 on 1 June 2004 and the balance on 1 August 2004. There will be three separate valuation dates (1 March, 1 June and 1 August) even though only one benefit was provided in the Will (the residue).

Payments during the Administration of the Estate

In a solvent estate the personal representative might make advance payments from the estate to a beneficiary. Each advance payment is likely to have its own valuation date (date of payment) so there could be several of these valuation dates before the personal representative is finally in a position to retain the balance of residue for the beneficiary.

A pecuniary legacy is a cash benefit and, in general, the personal representative can rely on the executor's year (i.e., the legal rule that the beneficiaries cannot compel personal representatives to distribute the assets of the estate until one year has elapsed from the date of death) to give them time to administer the estate. It should follow that the valuation date for a pecuniary legacy may not arise until the end of the executor's year. However if the estate is administered quickly, and the date of grant occurs within the year, the valuation date is likely to be the date of grant.

A valuation date can arise if a personal representative makes a part payment from a benefit, which is not otherwise being "retained", for the beneficiary. The valuation date will be the date that the part payment is made. A personal representative who distributes piecemeal as he receives assets may create a "string" of successive valuation dates.

The residue is the balance of an estate passing by Will, and it consists of the assets "left over" after all the specific benefits have been allowed for, and the debts and liabilities are paid. It can take some time to bring the administration of the estate to the point where the value of the residue can be ascertained, and the residue cannot be retained for the beneficiaries until the amount of the residue is known.

In general on an intestacy, the valuation date should not arise until the Grant of Administration issues, as beneficiaries cannot take or call for benefits until a representative is appointed to administer the estate.

Failure to Sell in the Course of Administration

In the current market executors are finding it difficult to sell property. This can put pressure on the estate and beneficiaries as the price continues to fall, and beneficiaries cannot access sale proceeds to fund their tax. Failure to sell will not push back a valuation date. The executor's job is to pay debts and distribute the estate in line with the Will or intestacy, and he may sell assets to distribute the estate or to facilitate the beneficiaries. However, he/she can also distribute *in specie* rather than selling the asset, and if the disposal of an asset is not essential to achieve the division of the estate the failure to sell the asset will not be material to the valuation date.

If the beneficiary is relying on receipt of the sale proceeds to pay the tax, a delay in sale may delay the payment of CAT, giving rise to interest and penalties. In addition a beneficiary may be watching the value of the property fall over time, so that the valuation date value on which CAT is paid may be substantially higher than the final sale price.

If the e-Briefs issued by Revenue (indicating zero tolerance for CGT delays) are any guide to the Revenue's approach, then it is likely to be difficult to secure any leeway because beneficiaries have funding issues.

The position might be different if the sale is required to enable the personal representative to complete his/her work in administering the estate. For example, if the asset to be sold is part of the residue and the value of the residue cannot be established until the property is sold, then the valuation date cannot arise until the sale, as the residue cannot be retained until the value of the residue can be ascertained.

Impact of Litigation

The valuation date arises because the estate reaches the point when the beneficiary's benefit can be identified and allocated to him/her. If an event occurs which results in uncertainty on whether the beneficiary will take the benefit, or on how much of the benefit will be available, this will displace any existing valuation date, and a new valuation date should be selected. There can be a number of factors that affect how an estate passes, and if the level of the estate, or the entitlement to a particular beneficiary's benefit, are in question, then the valuation date will be affected. However any litigation against an estate will not defer the valuation date for any beneficiary whose interest is not directly affected.

Actions that may be taken against an estate could include claims by a surviving spouse for a legal right share under S. 111 Succession Act 1965, or a claim by a child under S. 117 Succession Act 1965, for a part (or larger part) of the estate. Any such claim could affect the assets passing to all of the other beneficiaries creating uncertainty about the benefit to be allocated to each beneficiary and pushing back the valuation date. Such claims only affect assets passing through the estate, and an asset passing outside the estate (such as an interest in a joint property passing by survivorship) will not be affected.

There may be a challenge to the validity of the Will arising from alleged undue influence, incorrect execution of the Will, or the lack of capacity of the donor, and any such claim would affect the devolution of the entire estate and push back the valuation date for estate assets.

Revenue's Role

CAT is based on a self-assessment system but the legislation gives Revenue the final say on valuation dates as S. 30 (6) CATCA 2003 states that Revenue can determine the valuation date in respect of the whole or part of any inheritance. The taxpayer has the right to appeal. In cases of doubt, S. 30 (8) provides that Revenue may agree with the taxpayer on a particular valuation date to be applied to the estate.

Relevance of Valuation Date

1. CAT is due on the valuation date.
2. Assets are valued for CAT on the valuation date.
3. The pay & file deadline is established by the valuation date. Interest and surcharge may arise if this deadline is missed.
4. The farmer test for agricultural relief is carried out on the valuation date.
5. Property must be "agricultural property" on the date of the benefit and the valuation date to qualify for agricultural relief.
6. The question of whether property is relevant business property is determined on the valuation date.

Caveat: *These notes are intended as a general guide to CAT valuation dates. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*