OHT Guide - CGT for Estates in a Rising Property Market

Property Prices

There was a significant fall in property prices across Ireland in 2007/2008 and later years. However, in the last couple of years property prices have begun to recover.

The Daft Report on Irish Property (Q1 2015) indicates that the average asking price for Irish property reached its lowest point nationally in the third quarter of 2013 and has risen 18.4% since then. In Dublin, the bottom of the market was reached in the second quarter of 2012 and prices have risen by an average of 37% since that time.

CGT For Estates

Any rise in value before the death of a property owner is not taxable as the assets will be "rebased" for CGT on a death. However if a personal representative sells property in the course of administration a CGT liability will arise if the value of the property rises after the date of death.

The starting point for Estate CGT is the date of death value of the property as it is this value that will set the base cost for CGT purposes on a subsequent sale. Revenue have access to the Inland Revenue Affidavit (IRA) so the value in the IRA will generally be the starting point for the Estate's CGT computation.

Property Valuation

When completing the IRA practitioners should be aware of the potential for a CGT liability arising if they include a low valuation for the property in the IRA. It is at this point in time that the base cost for any property passing through the Estate will be set for its subsequent disposal and therefore the starting point for measuring the capital gain on such a disposal.

In previous years there may have been a tendency to include a valuation at the lower end of the range of a property's value for probate purposes to limit the CAT payable by beneficiaries. However, given the increase in property prices such conservative valuations are resulting in significant CGT liabilities for the Estate. As such, in Estates where property is going to be sold executors and practitioners should have a concern as to the property values being included for probate purposes so as to limit as far as practicable the potential CGT liabilities arising on sales by the Estate.

If a sale of property is likely to occur quite quickly following a death then the executors could consider delaying the filing of the Form CA24 until a sale price has been agreed so that an accurate valuation of the property at the date of death can be ascertained.

In the absence of any comparable recent sales in a particular area there can be a significant gap between the date of death value of a property and the sale proceeds even where the property is sold within a few months of the death.

If a low valuation is submitted to Revenue for a property in the Form CA24 and a subsequent sale of the property occurs within a few months of the death, with sale proceeds well above what was anticipated then a gain will arise.

It may be clear following the sale that the date of death value was low so the Estate may wish to correct the value previously submitted to Revenue for a more realistic valuation. However, Revenue are generally unwilling to accept a corrective affidavit with a more realistic date of death valuation unless it can be shown that the original valuation was manifestly wrong, which can be quite difficult to prove.

Conclusion

Given the significant increase in the CGT rate since 2008 serious consideration should be given to date of death valuations for properties so as to not end up paying more tax than is necessary.

Caveat: *These notes are intended as a general guide only. 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.*

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