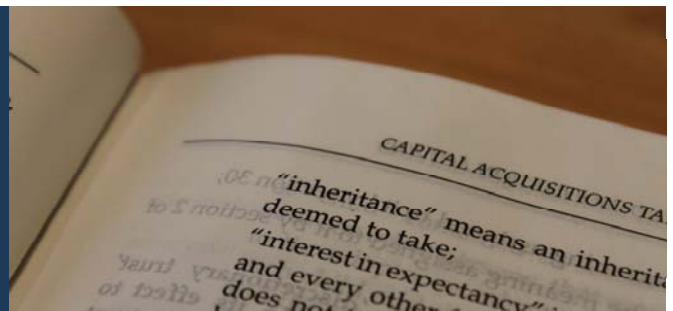


Passing Wealth to the Next Generation



The transfer of assets between spouses and civil partners is not subject to tax, so the focus of most inheritance plans is the transfer of wealth/assets to the next generation.

Parents who are considering the transfer of wealth to their children generally want to ensure that they safeguard the value of assets and businesses, maintain wealth within the family (in the event of the separation or divorce of their children), and pass wealth on tax-efficiently.

Relief Available

There are a number of reliefs available in respect of assets passing to the next generation. There are various conditions attaching to each of the reliefs and therefore, it is advisable to consider these reliefs early to allow for planning so that all of the conditions of the desired relief can be met. The main reliefs are discussed briefly below. It should be noted that these reliefs are complex and great care should be exercised to ensure that the relief can be secured and retained.

CAT Dwelling-House Relief

If dwelling house relief is available, no CAT arises on a benefit consisting of a dwelling house.

A "dwelling house" is a building or part of a building, which is used or suitable for use as a dwelling and grounds of up to one acre which are occupied and used with the dwelling.

A beneficiary must have occupied the dwelling as his only or main residence throughout the 3 years prior to the gift or inheritance, or 3 out of the 4 years if the dwelling has been replaced. The dwelling must have been occupied as the disponer's main residence unless the disponer was out of occupation as a result of infirmity, or the beneficiary is a dependent relative.

While any beneficiary can qualify for dwelling house relief on an inheritance if the conditions are met, it should be noted that dwelling house relief on a gift is only available on a transfer to a dependent relative.

A dependent relative is defined as an individual aged 65 years or over, or permanently and totally incapacitated by reason of mental or physical infirmity. The incapacity threshold is quite high given that there is a requirement for permanent and total capacity.

A beneficiary who qualifies for the relief can be subject to a clawback if the dwelling house is sold or not occupied for 6 years after taking the gift or inheritance.

The beneficiary must not be beneficially entitled to any other dwelling house at the date of gift or inheritance, and the position can be complicated if more than one dwelling house passes through an Estate to a beneficiary.

Further detail on dwelling house relief is provided on the OHT website.

CGT Retirement Relief

CGT retirement relief applies where a person over the age of 55 years disposes of qualifying assets which are part of a trade or business, or held by a family company carrying on a trade or business.

Sections 598 and 599 of the Taxes Consolidation Act 1997 ("TCA 97") provide relief from capital gains tax where an individual is disposing of chargeable business assets.

Section 598 applies in cases where the disposal is made to persons other than a child or a qualifying niece or nephew and there is a limit of €750,000 on the value of the qualifying assets. Once the €750,000 limit has been exceeded tax will be charged on the full value of the disposal but marginal relief can apply. A reduced consideration threshold of €500,000 applies for disposals by taxpayers aged 66 years or over.

Section 599 TCA 97 deals with the disposal of qualifying assets to certain family members (i.e. children and qualifying nieces/nephews). There is no limit for the value of the assets once the relief conditions are met and the disponer is aged between 55 and 66 but a limit of €3 million applies to the value of chargeable assets on a disposal to a child or qualifying niece or nephew where the disponer is aged 66 years or over.

CAT Business Relief

CAT business relief enables the donee/successor to reduce the value of a relevant gift/inheritance by 90% of its taxable value. In order for assets to qualify for business relief they must constitute relevant business property and the relief is not available if the value of the asset is derived "wholly or mainly" from investments. The assets must have been owned by the disponer for a

period of 2 years before an inheritance or 5 years before a gift.

The relief will be withdrawn if the relevant business property is disposed of within 6 years of the date of the gift/inheritance and not replaced within a period of one year from the date of disposal. If part of the relevant business property is development land then the clawback period is extended to 10 years.

CAT Agricultural Relief

Agricultural relief applies to gifts and inheritances of agricultural property and reduces the taxable value of a gift or inheritance by 90% of the value of the agricultural property. To avail of this relief a person must come within the definition of a "farmer" for the purposes of agricultural relief.

A "farmer" is defined as an individual who can show that on the valuation date for the gift or inheritance, not less than 80% of the market value of the property to which he is beneficially entitled in possession (after the taking of the gift or inheritance) is agricultural property and he must also be an "active" or "trained" farmer, or lease the land to an "active" or "trained" farmer for 6 years from the valuation date.

Any relief given may be wholly or partly clawed back within 6 years of the gift or inheritance if the agricultural land is sold or compulsorily acquired and not replaced within a year of the disposal by other agricultural property or if the beneficiary ceases to be an "active" or "trained" farmer, or the land ceases to be leased to an "active" or "trained" farmer.

This clawback period is extended to 10 years if the asset has development value.

Other Considerations

Consideration might also be given to the following:-

1. The child's CAT threshold can be used to shelter gifts, and the cut-off date for aggregation may move forward in the future effectively reinstating the child's threshold. Gifting assets (using bare trusts for minors) can be tax efficient if parents are happy to pass the assets on absolutely.

From a tax perspective, the main advantage is that the gift to the child is assessed on the market value at the date of the acquisition of the property, and

the relevant CAT rate is the rate that applies at the date of gift – rather than the future tax rate which can be higher. Any growth in value accrues in the child's hands. Family investment partnerships can also be utilised which allow for the donor to retain some control over the funds/assets that have been gifted.

2. The small gift exemption of €3,000 per annum can be used to make gifts. If both parents make a gift each year a child can be given €6,000 per annum with no CAT impact, giving an investment fund of circa €126,000 (ignoring any investment return) by the time a child reaches the age of 21 if gifts are made from birth.
3. If reliefs are claimed early gifts also have the benefit of "starting the clock" on clawback periods, so that the 6 or 10 year clawback periods expire, leaving the child free to dispose of the property without a clawback penalty.
4. Reliefs may be available at an early stage in the child's life that will not be available later. For example agricultural relief is generally only available to a "farmer" as defined and it includes a financial test. A beneficiary who takes agricultural property early on in life before he has any significant opportunity to accumulate personal wealth will generally meet the 80% financial farmer test.
5. If CAT arises on the transfer of property which also gives rise to CGT for the parent, the CGT paid can be credited against the CAT in most cases, thereby reducing the overall charge to tax to 33%.

The property transferred must be held by the child for a period of two years or the relief is clawed back. It should be noted that any CGT losses arising on a transfer to a connected party such as a child are "ring-fenced" to future disposals to the child.

6. If clients have S. 60 policies the level of cover should be reviewed from time to time. Movements in the property market, share prices and other assets held will impact the level of CAT payable. A review may also be required in the case of a movement in tax rate or tax-free threshold.

The CAT relief only applies if the policy proceeds are used to pay inheritance tax within 2 years of the donor's death. If the assets remain in a trust for more than 2 years the CAT relief may not be available.

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If tax advice is required on any of the points covered in this article, please email info@ohanlontax.ie.

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

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