OHT Guide

Taxation of Estates

Pre-death Taxes

Executors take over responsibility for ensuring that the pre-death taxes of the deceased (such as income tax, CGT) are paid and any tax due can be funded from estate assets.

Any income arising in the period from 01 January in the year of death to the date of death is pre-death income, and if the deceased was filing income tax returns, the estate should file a return for the year of death.

Any income arising after the date of death is income of the estate (rather than the deceased) and a second income tax return may be required from the estate in the year of death in relation to this post death income.

Post-death Income Tax

Personal representatives should ensure that income tax is paid in respect of any income arising to the estate during the administration period, and a Nil Notice of Assessment should be obtained for the estate for any tax year in which income arose.

When income is distributed to beneficiaries they can claim a deduction for any income tax paid by the executors, so a separate income distribution schedule should be provided showing gross income arising, tax paid, and net income distributed. An R185 form should be provided to the beneficiary when the income is paid out.

Post-death Capital Gains Tax

Capital gains tax is a tax on the rise in the capital value of assets. No CGT arises where assets are passed to a beneficiary under a Will or on an intestacy.

It should be noted that if assets in an estate rise in value while held by the personal representatives of the estate, then the personal representatives will pay CGT if they dispose of the assets as part of the administration of the estate.

If assets fall in value between the date of death and the date of disposal by a personal representative there will be a loss on the disposal and no CGT will be payable. A capital loss can be set against a capital gain arising in the same year, and can be carried forward against future gains but cannot be set back against prior year gains by a personal representative.

It follows that personal representatives should consider the timing of disposals if some assets which are to be sold will give rise to a loss and some will give rise to a gain.

Personal representatives cannot pass a capital loss on to the beneficiary of an estate (unlike trustees who can pass an unused loss on to the beneficiary of a trust). If it is clear that there will be a capital loss on the disposal of an estate asset, and if the personal representative will not be in a position to use that loss to shelter estate gains, then consideration may be given to appointing the asset to a beneficiary , who can then go on to dispose of the asset after he receives it so that the loss accrues to him personally, and can be carried forward against future gains of that beneficiary.

Capital Acquisitions Tax (“CAT”)

CAT generally arises where a gift or inheritance is taken by or from a person living in Ireland. There is provision for a tax free threshold below which no tax is paid, and the level of tax free threshold depends on the relationship between the person giving the benefit and the person receiving it. For example where a parent leaves an inheritance to a child the tax free threshold is currently €280,000. By contrast where a parent receives a gift from a child the tax free threshold will generally only be €30,150.

The tax free threshold rules are cumulative, so all gifts or inheritance received since 05 December 1991 which are subject to the same class free threshold will be added together, and CAT will be payable on the excess over the threshold.

Example

If a child takes an inheritance of €500,000 from his parents, and there was a prior class (a) benefit of €50,000 (taxable value) bringing the available threshold down from €280,000 to €230,000, CAT will be charged on €270,000 (the difference between the benefit and the available threshold) at a rate of 33%. Therefore, €89,100 should be paid to Revenue as CAT arising on the benefit.

CAT is triggered when a person becomes entitled to receive the asset in possession. Therefore if an asset is passed into a discretionary trust no CAT arises until the benefit is distributed to the beneficiary. Therefore a discretionary trust can be used to delay payment of CAT.

Post FA10 personal representatives will not have a secondary liability for the beneficiaries’ CAT, unless the beneficiary is non-resident.

Discretionary Trust Tax

Assets passing through an estate may be transferred to a discretionary trust, deferring CAT until a beneficiary receives a benefit.

Discretionary trust tax is the price paid for the flexibility of a discretionary trust and the deferral of CAT. There is a once off charge of 6% on the capital held by a discretionary trust. However this charge will not arise on a will trust until all the principal objects of the trust (generally the children of the person setting up the trust but can also be the spouse of the person setting up the trust) are over the age of 21. If the trust is distributed within 5 years then part of the initial charge may be refunded, reducing the effective charge to 3%.

Once the initial charge arises there is a further annual charge of 1% of the capital value of the fund.

Income arising to a discretionary trust is subject to an income tax surcharge of 20%, if it is not distributed within 18 months of the end of the period in which it arose.

Stamp Duty

Stamp duty is a tax on deeds transferring assets. There is no stamp duty charge on the transfer of assets to beneficiaries or into a trust set up by a Will as part of the administration of the Will. However if the trustees or beneficiaries buy assets then the normal stamp duty rules apply.

In their "Additional Guidance Notes on e-Stamping" Revenue indicate that a liability to stamp duty does not arise, and a stamp duty return is not required to be delivered, in respect of a Deed of Assent where property is vested in the person fully entitled to the property under the Deceased's will or on intestacy. A liability to stamp duty can arise in respect of a Deed of Assent where the effect of the instrument is to vest the property in a person other than as provided for under the deceased's will or intestacy.

Where a stamp duty liability arises in respect of a Deed of Assent, a return is required, and the personal representative should be included as the vendor using the PPS number of the deceased (of the estate if a separate PPS number has been allocated for the purposes of the administration).

Final Distribution

If there are non-resident beneficiaries Revenue allow the personal representatives to close off any post-distribution liability for CAT by sending a "one month letter" to Revenue notifying them that the estate is to be distributed. If Revenue want to review the CAT position in detail they should notify the personal representative who should retain the funds without distributing until the Revenue are satisfied.

If no response is received from Revenue to the "one month letter" they will deal with the beneficiary rather than with the personal representatives in the event that they carry out a future audit.

Where assets are to be distributed it may be advisable to seek a "distribution" letter (for taxes other than CAT) confirming that Revenue are satisfied that the deceased's pre-death tax affairs are in order, and that the estate taxes have been accounted for, and that the personal representative can distribute.

The personal representatives should also ensure that CGT is paid on any disposals made by the estate, and should secure a Nil Notice of Assessment and Letter of No Audit.

In addition personal representatives may wish to seek an indemnity on distribution confirming that if Revenue do seek further tax post distribution the beneficiaries will indemnify them.

PPS Numbers for Estates

If the estate is small and there is very little tax work to do Revenue may be willing to use the deceased's PPS number.

If the estate is complex or there are a lot of tax returns due Revenue may prefer the personal representatives to be allocated a new PPS number in their representative capacity. Increasingly, Revenue are requiring all estates to be registered for tax separately. Generally the Department of Social Protection issues PPS numbers but Revenue can allocate PPS numbers to estates. They may seek a form TR1 to register the estate for tax.

If tax advice is required on any point raised in this article an email can be sent to info@ohanlontax.ie.

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