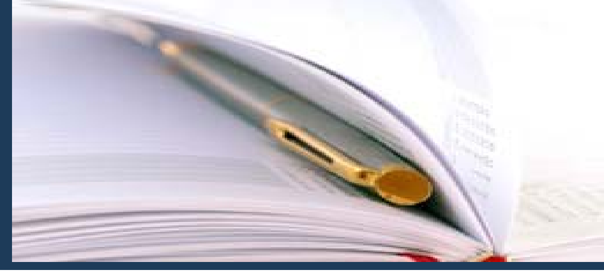
Planning the Exit from a Business



Planning for Retirement

Most people begin to plan for retirement by setting up a pension fund, but in many cases the retirement plan is then left dormant until close to the age of retirement.

It can be beneficial to review the "exit" plan at various stages in a working life, and it is generally advisable for an taxpayer who owns his own business to start planning his exit from work 10 years before he actually retires.

The key areas of focus for retirement planning include:

1. Creating and extracting sufficient retirement income to ensure independence from the business post-retirement. This can involve the use of pension contributions, or share-buybacks funded by the company;
2. The means by which post retirement income can be drawn down should be assessed – the use of tax free lump sums, ARF structures, and the underlying pension investments may need to be considered;
3. If the business is to pass to a family member consideration should be given to whether the benefit will be eligible for the business reliefs – CGT retirement relief, and CAT business relief;
4. If the business is to be sold, consideration should be given to maximising the availability of retirement relief and the tax implications of any planned investments of the sales proceeds;
5. Retirement may involve a major change in the income and assets profile, in which case, any Will should be reviewed to ensure that it is still effective and tax efficient.

Needs Post Retirement

It is advisable to develop a separate pool of assets which will provide a level of financial security in retirement. As life expectancy increases the length of time spent in retirement expands, and consideration needs to be given to funding retirement.

In most cases earned income needs to be replaced by passive post-retirement income in the form of pension and income from investments such as rent, dividends, and interest.

Consideration needs to be given to identifying assets which can be cashed in to release capital, if required, without drastically reducing available income.

Pensions

Company contributions to a pension plan are tax deductible as a trading expense, and if made as employer contributions are not taxed as a BIK on the employee, and are not subject to employer's PRSI. This makes employer pension contributions a very tax efficient form of saving for retirement.

Taxpayers who are sole traders, with no employer, can make a contribution to pension based on a percentage of relevant earnings, with the percentage of relief allowed increasing as the taxpayer approaches retirement (click here for details).

Share-buybacks Funded by the Company

A taxpayer who is retiring from a company which will carry on trading, and has cash reserves, may consider a share buyback.

The extraction of cash from a company is normally subject to CGT but if the buy back benefits the trade (by assisting in a shareholder moving on to leave the business to the next generation) and the shareholder is disposing of his entire shareholding (apart from a nominal level of shares) Revenue should accept that the buy-back qualifies for CGT treatment. In some cases retirement relief may be available (see below).

Reorganisations

A company or group reconstruction can facilitate the separation of one or more trades or businesses into separate companies so as to allow the businesses to be left separately to two or more family members, or to allow new investors to be brought into a specific business. It can also assist in packaging a specific business for sale to fund retirement planning and can assist in qualifying for CAT and CGT reliefs by separating qualifying and non-qualifying assets.

CGT Retirement Relief

Capital Gains Tax (CGT) is a tax on gains arising from the disposal (by sale, gift or otherwise) of certain assets. Retirement relief may be available if an individual who is aged 55 or over disposes of an interest in a business. Revenue may extend the relief to someone under the age of 55 who is terminally ill.

In Tax Briefing 60 (August 2005) Revenue gave the following guidance on when retirement relief will be allowed for a person under the age of 55 years:-

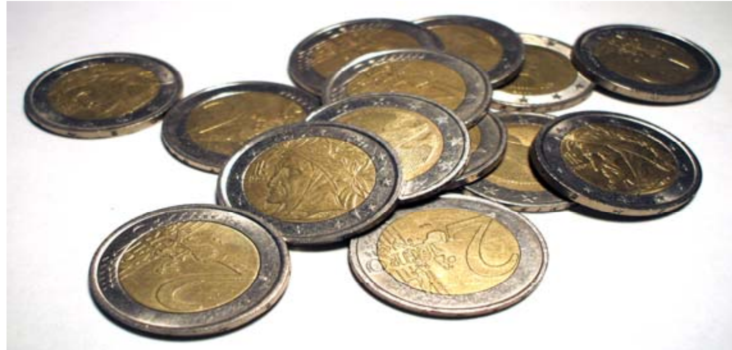
Sections 598 and 599 TCA 1997 provide for relief ...[for] individuals who are 55 years and over at the time of disposal.
Where an individual disposes of 'qualifying assets' before his/her 55th birthday the Revenue Commissioners will consider claims for relief where all the following conditions are present.

- *The claimant is, due to severe or chronic ill health, unable to continue farming, or in his/her trade, profession office or employment or as a working director in a relevant company*
- *On cessation the claimant disposes of 'qualifying assets' - at the time of disposal the conditions for relief, other than the age requirement, are satisfied*
- *At the time of disposal the claimant is within 12 months of his/her 55th birthday*

working director for a minimum of 10 years up to the date of disposal, 5 years of which were on a full time basis.

Notwithstanding the name of the relief there is no need for the taxpayer to retire and he can remain actively involved in the business and remain a shareholder and/ or director of the company following the disposal of the business assets.

Relief is available on a sale to a third party or a transfer of the business or company within the family. Where the disposal is to a child of the owner, there was no limit on the level of value which could qualify for relief before Finance Act 2012. It should be noted that a favourite niece or nephew working in the business will be treated in the same way as a child and the legislation has been extended to include children related through a



registered civil partnership.

The Finance Act 2012 introduced a limit of €3,000,000 for an individual aged 66 or over who transfers assets to a child on or after 01 January 2014.

There is a clawback of the relief if the child disposes of the assets within 6 years, or 10 years where there is development value.

Where the disposal is to a person other than a child, there is a limit of €750,000 on the relief (with some provision for marginal relief). However the Finance Act 2012 reduced this limit to €500,000 for disposals on or after 01 January 2014 if the disponer is aged 66 or over when a disposal occurs.

Change in Residence

Irish tax law ties the exposure to Irish taxation to the domicile, residence and ordinary residence of a taxpayer. If a taxpayer is planning to retire abroad consideration should be given to whether the disposal of assets should be deferred until after the taxpayer becomes resident abroad.

If assets which are not “specified assets” as defined for CGT are disposed of by a non-resident there should be no CGT in Ireland. The local tax implications of any disposal in the jurisdiction that the taxpayer is living in after retirement will need to be considered.

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. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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