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Time to Plan Ahead – gifts and inheritance tax

"The time to repair the roof is when the sun is shining." – John F. Kennedy.

May's edition of our monthly newsletter focuses on an area that is applicable to us all, with our tax practice recognising the need to advise our clients on the importance of planning ahead. With the uncertainty of these current times reiterating how none of us can predict the future, it serves as a reminder that we can still plan for it.

We will look at decisions that can be made now. These decisions can potentially minimise or even eliminate the amount of tax payable upon gift / transfer / inheritance to and from family, friends and others. This article will take the form of the following headings:

(1) Small Gift Exemption;
(2) Gifting of a Site to a Child;
(3) Business Relief;
(4) Other considerations

Capital Acquisitions Tax ("**CAT**") is a beneficiary-based tax, levied on the recipient of a gift or inheritance. Whether a tax liability falls due depends on who the benefit is received from, as well as whether the beneficiary has received a prior benefit from persons within the same group threshold since 5 December 1991.

For context, the current group thresholds applicable since October 2019 are as follows:

(i) **Group A** - €335,000 where the recipient is a child / foster child / minor child of a deceased child, of the disponer. In certain circumstances, parents can fall within this threshold as well as nephews / nieces who have worked for a certain period of time in a family business;

(ii) **Group B** - €32,500 where the recipient is a lineal ancestor or lineal descendant of the disponer, a brother, a sister, or child of a brother or sister; and

(iii) **Group C** - €16,250 for all other recipients not covered in groups A or B.

Where a recipient's aggregable gifts and inheritances exceed 80% of the relevant group threshold, they are obliged to file a CAT return. All gifts and inheritances with a valuation date in the period 1 January to 31 August in any year must be included on the return to be filed by 31 October in that year. All gifts and inheritances with a valuation date in the period 1 September to 31 December in any year must be included on the return to be filed by 31 October in the following year.

1) Small Gift Exemption

Perhaps a forgotten child at times amongst CAT reliefs is the small gift exemption (the "**SGE**"). It remains an extremely tax efficient tool, and can assist greatly in providing money to children, amongst others, over a number of years. The SGE allows for a gift of €3,000 to be received from anyone every calendar year. In other words, you may take a gift from several people in the same calendar year and the first €3,000 from each disponer is exempt from CAT.

Therefore, a child can receive €3,000 from each parent (i.e., €6,000 in total) every year. For those fortunate enough to be in a position to provide €6,000 a year to a child, it allows one to accumulate a substantial pot of money over the years for the larger expenses down the road, i.e., mortgage deposit, wedding, etc. Monies received by way of the SGE do not have an impact on the beneficiary's CAT group thresholds. In other words these small gifts are completely tax free.

2) Gifting of a Site to a Child

A very useful Capital Gains Tax ("**CGT**") relief exists for people wishing to transfer their land to their children (including step child and fostered child). The relief is subject to the child proceeding to build their own PPR on the site. Parents would otherwise be assessed to CGT on the "deemed" proceeds, i.e., CGT based on the market value of the site being gifted.

In order to qualify for this relief, the land must be no more than one acre in size with a value of €500,000 or less. To obtain the relief, you include the relevant detail in your subsequent CGT return.

There is no clawback of the CGT relief on the disposing parents. However, the child will be subject to a CGT liability / clawback if:-

1) They dispose of the land that they received as a gift (other than to their spouse / civil partner); <u>and</u>
2) Upon disposal, the land does not contain a house that they lived in for 3 years as their PPR.

3) Business relief

This is a significant relief that reduces the taxable value of qualifying business assets by 90% for CAT purposes. The relief applies to the transfer of a business, or a share in a business, or the shares or securities of a company carrying on a business.

As mentioned previously, there is a general requirement that a CAT return is filed upon receipt of a gift or inheritance, where the taxable value exceeds 80% of the relevant group threshold. For business relief, a return must be filed regardless of the value of the business property.

When dealing with shares held in a company, the business assets and non-business assets must be distinguished. In particular, the value of the shares derived from the business assets must be established, as business relief is limited to the business asset element.

Separately, a similar relief applies to market value of agricultural property.

4) Other considerations

To finish up, it is worth touching on two areas briefly. Discretionary trusts and section 72 insurance policies.

Discretionary trusts can act as a tool in deferring the potential 33% CAT liability. However, a one-off 6% initial charge on the trust value is imposed on the latest of three dates:

a) The date that property becomes subject to the trust;
b) The date of death of the disponer; or
c) The date the youngest object of the trust reaches 21 years of age

Prior to this 6% charge, property could sit in a discretionary trust for generations without becoming subject to CAT. A further 1% annual tax on the value of the trust arises on 31 December each year. There are exemptions from both the 6% and 1% taxes ("**DTT charges**") where a discretionary trust is setup for a charity or person with disabilities.

This form of trust is useful for trustees that are planning ahead, with the intention of investing the property of the trust (less the DTT charges), whilst avoiding a 33% tax outlay from the outset, and thereby preserving and growing wealth in the interim.

Separately, the primary purpose for initiating a section 72 policy is to benefit from a CAT exemption on the policy proceeds. The proceeds, however, must be used towards discharging a CAT liability. This can be a particularly beneficial tool where an estate may not consist of liquid assets, as a large tax liability may otherwise require the beneficiaries to sell estate property. Of course, the SGE can also be utilised by potential beneficiaries to build up a "tax liability pot".

The above are just some of the options open to those considering succession planning, whether it is the giving of gifts during your lifetime or by passing on wealth by way of inheritance. We are fielding more and more tax planning queries from clients over the last 12 months as people have had the time to consider their options, whilst managing to save that bit more during the quiet period. With the economy gradually reopening, and life resuming to its busy pre-Covid norm, now more than ever is a great time to give thought to the future. If you would like to explore your options, please reach out to:

Alan Sheehan, Solicitor, assists individuals with their succession and wealth planning strategies, as well as filing their tax returns. He also works closely with David in helping businesses to navigate their way through share buybacks and reorganisations with a view to accommodating departing shareholders or making way for new management.

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