Passing on Business Assets - July 2010

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Advisory Services – Irish Life

When business assets are [1]disposed of, either through sale, gift or inheritance, a number of different tax charges may arise.

- A Capital Gains Tax charge may be incurred by the person disposing of the assets, even if the assets are being given as a gift. The current CGT rate is 25%.

- A Capital Acquisitions Tax charge may be incurred by the recipient of the gift or inheritance or where the sale price is below market value. The current CAT rate is 25%.

- A Stamp Duty charge will be incurred where assets are transferred during a person's lifetime. Stamp Duty is not chargeable on transfers as a result of death. Stocks and shares and other marketable securities are liable to stamp duty at a rate of 1%. All other assets are liable at a rate of between 1% and 9% depending on the value of the assets.

Three different reliefs are available, which if applicable can reduce these tax charges.

- **Retirement Relief from Capital Gains Tax**
- **Business Relief from Capital Acquisition Tax**
- **Consanguinity Relief from Stamp Duty**

The rules applying to these reliefs, and the requirements for attaining them, are detailed in the remainder of this document.

Retirement Relief

This is a relief from CGT on the disposal of business assets or shares in a family trading company. The requirements for this relief to be applicable are as follows:

- The individual disposing of the assets must be over age 55. **There is no actual requirement to 'retire'**
- The relief applies on the disposal of qualifying assets, where the individual has owned them for at least 10 years.
- The sale must not be part of any scheme to take money out of the company without the payment of tax.

In addition, where shares are being disposed of:

- The individual must have been a working director of the company for at least 10 years and have been a full time working director for at least 5 years.
- The individual must own at least 25% of the voting rights of the company, or where they own only 10%, other members of their family own at least another 65%.

The relief applies to assets used in the course of the trade. It specifically excludes assets held by a company as investments.

There are two different forms of Retirement Relief.

- Where the disposal is to a child (including the child of a deceased child, certain nephews, nieces and foster children), there is no limit on the value that may qualify for relief. The relief is clawed back in the event that the child disposes of the assets within the next 6 years.
- Where the disposal is to someone other than a child, relief is only available for qualifying assets valued up to €750,000.

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Both reliefs are separate and can be availed of individually.

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1. We are specifically excluding discussion of transfer or share back to a company.

Marginal Relief
Where the part of the consideration qualifying for the relief exceeds €750,000 then marginal relief may apply. Marginal relief limits the capital gains tax payable to 50% of the difference between €750,000 and the actual consideration. Marginal relief will cease to have any benefit where one half of the excess exceeds the tax payable under normal rules.

Disposal to Spouse
The threshold of €750,000 applies to each individual. Therefore a married couple owning qualifying assets can potentially receive up to €1,500,000 from the sale of their business assets without incurring a CAT liability. However, while the transfer of qualifying assets between spouses will not give rise to a chargeable gain, this disposal will be aggregated with all other disposals of qualifying assets by the transferring spouse for determining if the threshold has been breached. Care should therefore be taken when transferring assets between spouses.

€750,000 is a 'lifetime' limit
Proceeds from all disposals in current and prior years must be aggregated to determine if the limit of €750,000 has been exceeded.

Terminally Ill
Where an individual disposes of "qualifying assets" before his / her 55th birthday, the Revenue Commissioners will consider claims for relief based on a number of conditions.

Qualifying Assets
Qualifying assets are either, chargeable business assets, which are used in the course of the trade, or shares owned by the individual in a trading or farming company. It is important to note that the assets must be qualifying assets throughout the ten year ownership period and not just at the date of disposal.

Business Relief
This is a relief from CAT. The taxable value of a business is reduced by 90% if the recipient can meet one of the following ownership/control tests:

- they control 25% of the voting power over all matters relating to the company, or
- they control the company or the company is controlled by the recipient and their relatives, or
- they hold at least 10% of the issued capital of the company and have worked full time in the company for 5 years prior to the gift/inheritance.

A business which is wholly or mainly concerned with dealing in land, shares, securities or currencies or the making or holding of investments is excluded from business relief.
The business must have been owned by the person disposing of it for a period of 5 years prior to a gift or 2 years in the case of an inheritance.
If the business property is sold by the recipient within 6 years, and not replaced within one year with other business property, the entire relief will be clawed back

CGT / CAT Offset
When an asset is gifted, a liability for both Capital Gains Tax and Capital Acquisitions Tax can arise in respect of the same disposal. Where this happens, the Capital Gains Tax payable is allowed as a credit against any Capital Acquisition Tax due.
This rule is important where it is intended to gift a mix of assets, some of which are subject to CGT and some of which are not. It is generally better to gift the assets not subject to CGT first, and use up the beneficiaries' CAT threshold, before gifting the assets subject to CGT, where the CGT may be offset against any CAT liability.

Consanguinity Relief
The stamp duty payable on sales, gifts or transfers of property between related individuals is chargeable at 50% of the normal rate that would otherwise apply to a transaction between unrelated people. This relief does not apply to a transfer of shareholdings.

Lets take an example.

John owns two separate businesses.
The first is a furniture shop which he owns as a sole trader. He opened the shop 15 years ago at a cost of €200,000. This business is today valued at €1,000,000.

The second is a carpentry business. He has been a shareholder in the business for the last 17 years with two other shareholders. He bought into the business for €300,000 and his shareholding is now valued at €500,000.
John is now aged 57 and has decided to retire from both businesses this year. He has decided to gift his son the furniture shop and sell his shareholding in the carpentry business to an interested party.

The tax implications of John's decision are detailed below.

Firstly assuming no reliefs apply:

Gifting the Furniture Shop:

As John is the person gifting the asset, he is liable to a CGT charge. His son will be liable to CAT.

John's CGT bill is calculated as follows :

Current Value	€1,000,000
Purchase Price	€ 200,000
Gain	€ 800,000
CGT bill at 25%	€ 200,000

His sons CAT bill is calculated as follows :

Value of Gift	€1,000,000
Less Group 1 Threshold	€ 414,799
Less small gift exemption	€ 3,000
Taxable Gift	€ 582,201
CAT bill at 25%	€ 145,550*

*In this case a liability to both Capital Gains Tax and Capital Acquisitions Tax has arisen on the same disposal. In such circumstances the Capital Gains Tax is allowed as a credit against any Gift Tax due by the recipient of the asset.

Stamp Duty on the transfer of the assets is charged at 1% which is €10,000.

So the total Tax Bill payable by John and his son on this "disposal" will be €210,000.

Sale of the Carpentry Business:

John's CGT bill is calculated as follows :

Current Value of John's share	€ 500,000
Purchase Price	€ 300,000
Gain	€ 200,000
CGT bill at 25%	€ 50,000

The total tax bill on the two transactions assuming no reliefs are availed of is :

CGT for John on Shop	€200,000
CAT for his son	€145,550* not payable as offset available
Stamp Duty	€ 10,000
CGT on Carpentry Business	€ 50,000
Total Tax Bill	**€260,000**

Secondly assuming reliefs apply :

Gifting the Furniture shop:

John's CGT bill is calculated as follows :

Current Value	€1,000,000
Purchase Price	€ 200,000
Gain	€ 800,000
CGT bill at 25%	€ 200,000
Less Retirement Relief	€ 200,000
Actual CGT bill	€ 0.00

His sons CAT bill is calculated as follows :

Value of Gift	€1,000,000
Business Relief @ 90 %-	€ 900,000
Taxable value	€ 100,000
Group 1 Threshold	€ 414,799
Taxable Gift	€ 0.00
CAT bill at 25%	€ 0.00

Retirement Relief from Capital Gains Tax for John.
As the disposal is to John's son, no monetary limit applies and John can pass his business worth €1,000,000 to his son without a charge to CGT arising.

Business Relief from Capital Acquisitions Tax for his son
John's son will have received a gift of a business valued at €1,000,000. Business Relief will reduce the taxable value of the gift to €100,000.
Assuming the full child threshold of €414,799 (2010) is available, together with the annual small gifts exemption of €3,000, no liability to CAT arises for John's son.

Stamp Duty on the transfer of the furniture shop is charged at half the normal rate because the transfer is between 'related persons'. So the stamp duty cost for John's son is €5,000.

Sale of the Carpentry Business:

Current Value of John's share	€ 500,000
Purchase Price	€ 300,000
Gain	€ 200,000
CGT Tax at 25%	€ 50,000
Retirement Relief	€ 50,000
Actual CGT bill	€ 0

As the proceeds of the sale do not exceed €750,000, full relief from Capital Gains Tax is available on this disposal.

We can see from the above examples that both 'Retirement Relief's' can be availed of separately. John has gifted a business worth €1,000,000 to his son and sold €500,000 worth of shares in his other business without a charge to CGT for himself because he was able to avail of Retirement Relief on both transactions.

So the only tax liability on the two transactions is Stamp Duty of €5,000 as apposed to a total tax bill of €260,000 as outlined earlier.

In this update we have concentrated on the conditions for Retirement Relief where a family business is being disposed of. There are some additional conditions where farming assets are concerned.

Details of these additional conditions, together with full details of Business and Agricultural Relief from Capital Acquisitions Tax, can be obtained from your Account Manager.

Summary of tax implications

	Capital Gains Tax	Capital Acquisitions Tax	Stamp Duty
Death	N/A	• **Beneficiary liable** • Business Relief can reduce value by 90% • Child Threshold €414,799 (2010) • Inheritance Tax at 25%	N/A
Gift	• **Disponer liable** • Retirement Relief (max €750k non child) • CGT at 25%	• **Beneficiary liable** • Business Relief can reduce value by 90% • Child threshold €414,799 (2010) • Annual Small Gifts exemption €3,000 • Gift Tax at 25%	• Property 1% - 9% (value / type) • Shares 1%
Sale @ Market Value	• **Disponer liable** • Retirement Relief (max €750k non child)	N/A	• Property 1% - 9% (value / type) • Shares 1%

This document provides a brief outline of the conditions applying to Retirement Relief from Capital Gains Tax, Business Relief from Capital Acquisitions Tax and Consanguinity Relief from Stamp Duty.
This is a specialised area and specialist tax advice should be sought, in advance, if the reliefs are to be availed of.