

Cross Border Business Succession and Related Tax Issues

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Cross Border Business Succession

- The Complications
 - Two tax systems
 - Two legal systems
- Now's a Good Time for Planning
- Why?
 - Values of Property and shares lower than they have been in years.
 - Potential cutting of reliefs and increase in tax rates in ROI from 2012
 - Review taking place in UK on tax reliefs

Inheritance & Gift Taxes

ROI

- Capital Acquisitions Tax
 - 25%
 - Beneficiary Based system
 - Applies to gifts and inheritances
 - Exemption threshold based on relationship of beneficiary to disponent/deceased
 - Child of disponent €332,084
 - Lineal ancestor/descendant €33,208
 - Stranger in Blood €16,604

UK

- Inheritance Tax
 - 40%
 - Donor based system – estate is taxed
 - Applies only to chargeable lifetime gifts and inheritances
 - Most lifetime gifts are potentially exempt transfers except those within 7 years of death
 - Nil Rate Band £325,000

Example

- David and Jill were born in NI and have lived all their lives there. They have a cross border retail business with shops in NI and ROI. The last shop they opened they hold through an ROI company (to avail of the lower tax rate). They have 3 children Sandra, Paul and Max. Sandra and Paul live in NI but Max has been living in ROI for several years. They want to know where they will have to pay tax and whether there is any benefit in making lifetime gifts.

Inheritance & Gift Taxes

ROI

- Chargeable where
 - Disponer/deceased is resident or ordinarily resident in ROI – entire gift or inheritance
 - Beneficiary is resident or ordinarily resident in ROI
 - Assets are ROI situate assets

UK

- Chargeable where:
 - Disponer/deceased is domiciled or “deemed domiciled” in UK
 - Deemed domiciled if resident in UK 17 out of last 20 years or was domiciled in UK within previous 3 years
 - Non UK domiciled only chargeable on UK situate assets

Inheritance & Gift Taxes

ROI

- Reliefs available:
 - Spouse exemption - full – no residency or domicile requirement
 - Small gifts – “normal expenditure out of income”

UK

- Reliefs available
 - Spouse exemption – full if both UK domiciled or both non UK domiciled
 - Limited to £55,000 where recipient spouse is non domiciled
 - Annual gift exemption €3,000 from any one disponer

Inheritance & Gift Taxes

ROI

- Business Property Relief
 - Relevant Business Property
 - 90% relief
 - A business or an interest in a business
 - Unquoted shares -25% or more
 - Unquoted shares - 10% or more where recipient has been a fulltime employee of the company for 5 years
 - Assets owned by controlling shareholder and used in the company trade passed at same time and to the same person as shares in the company

UK

- Business Property Relief 100%
 - Relevant Business Property
 - 100% relief
 - A business or an interest in a business
 - Unquoted shares irrespective of shareholding size – no employment requirement
 - 50% relief
 - Assets owned by controlling shareholder and used in the company

Capital Gains Tax on Lifetime Business Transfers

ROI

- Capital Gains tax chargeable on
 - ROI resident and ordinarily resident – gains on worldwide assets
 - Non ROI Resident and ordinarily resident – ROI specified assets ie land and buildings, exploration exploitation rights shares deriving their value wholly or mainly from specified assets.

UK

- Capital Gains tax chargeable on
 - UK resident and ordinarily resident – gains on worldwide assets
 - Non UK resident – no charge to UK CGT

Capital Gains Tax on Lifetime Business Transfers

ROI

- Capital Gains Tax Reliefs
 - Retirement Relief
 - >55 years
 - 10 year holding period
 - Sole trader, partner or Working director of trading company
 - €750,000 aggregate cap third party disposals – clawback
 - No Cap for transfers to child or favourite niece/nephew – 6 year clawback

UK

- Entrepreneurs Relief
 - Reduced effective tax rate of 10% on Gains from disposal of business assets
 - 1 year holding period
 - Lifetime Cap gains of £5m
- Gift Holdover Relief
 - deferral of gains until future disposal
 - Not available for PETS only chargeable lifetime transfers unless they fall within the Nil Rate band

Stamp Duty on Lifetime Business Transfers

ROI

- Stamp Duty applies to sales and gifts
 - 1% on share transfers
 - 6% on commercial property
 - Consanguinity (blood relative) relief 50% for property transfers not shares
- No Stamp Duty on Death

UK

- Stamp Duty
 - 0.5% on share consideration
 - On commercial property
 - 1% up to £250,000
 - 3% £250,000 -£500,000
 - 4% over £500,000
- No Stamp Duty on true gifts no consideration
- No Stamp Duty on Death

Succession Planning for David & Jill

- ROI CAT
 - Neither David or Jill resident in ROI
 - BUT CAT applies to
 - ROI situate shops and shares in ROI company and
 - Max is ROI resident so anything he receives
 - Business Property Relief
 - 6 year clawback – reinvestment option
 - Child Thresholds €332,084
- UK IHT
 - Both UK domiciled – entire estate subject to IHT
 - 2 X Nil Rate Band £325,000
 - Lifetime gifts >7 years before death = PETs
 - Business Property Relief
 - Treaty credit relief for CAT suffered

Succession Planning for David & Jill

ROI

- Retirement Relief within the family should shelter gains on disposals
- Clawback if child doesn't hold it for 6 years – no reinvestment option

UK

- Entrepreneurs relief on business assets – pay 10%
- Only dispose of assets that trigger the least gains during lifetime

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