

Are You Having Difficulty Paying Inheritance Tax?

Many beneficiaries in estates in these straightened times are finding themselves in the difficult position of not being able to fund the payment of Capital Acquisitions Tax from their own resources. In more financially buoyant times a beneficiary would have found it easier to sell property to fund the payment of CAT or to raise a mortgage to pay same. These options are becoming less readily available.

There is also a second major difficulty facing beneficiaries which is the present value of property is very frequently less than the date of death value and more importantly the value of the date at the Grant of Administration in the deceased's estate which is generally the date which is utilised as the valuation date and the date from which CAT is actually payable. The position is that beneficiaries may find themselves being liable to pay CAT calculated on the value of the asset as of the date of the Grant of Administration and frequently that asset is no longer worth that value.

Further, as we all know, Revenue are becoming much more proactive in collecting unpaid taxes and it is the experience of practitioners that Revenue are not as willing as in previous years to delay the payment of CAT until the property can be sold. Even in those rare cases where the Revenue are agreeing to postpone the payment of tax it should be noted that the interest accruing on the unpaid tax continues to accrue right up until the tax is actually paid. The interest rate which is levied is also quite severe and certainly greater than bank interest rates.

We turn now to look at the various options open to the beneficiary who find themselves in such a position.

There are four options available and these are as follows:

1. The payment of CAT by statutory instalments.
2. The payment of CAT by non-statutory instalments.
3. The registration of the debt as a voluntary judgment mortgage.
4. Those cases covered by Section 59, CATCA 2003 which deals with postponement remission and compounding of tax in the context of Common Law Spouses.

Statutory Instalments

This procedure has been in existence for some time but has not been used very widely. Its use is becoming more common.

Effectively the legislation provides that the tax payable can be paid by 5 equal yearly instalments. The first instalment should be paid at the expiration of 12 months from the date on which the tax became due and payable and the interest on the unpaid tax shall be added to each instalment and must be paid at the same time as the instalment.

There is provision to pay an instalment before it becomes due.

It should be borne in mind that this method of discharging a CAT liability can only be used in the following circumstances:

- a) Where a beneficiary has inherited or been gifted a limited interest i.e. for life or a period certain in any property, or
- b) Where a beneficiary has inherited or been gifted an absolute interest in immovable property, i.e. agricultural land (which includes farm machinery) and relevant business property.

The procedure cannot be used with a gift or inheritance is an absolute interest in personal property.

Personal property is effectively everything which is not land or buildings. In such a case, the tax must be paid in one lump sum.

Where the inheritance or gift is a mix of both real and personal property then the tax on the personal property must be paid when it is due except in the case of a limited interest and the tax due in relation to the real property may be paid by statutory instalments.

The major disadvantage with the instalment method is that the interest is quite severe. The interest rate levied by Revenue is a daily rate of 0.0273%. This actually works out at over 30% over the five-year term.

It can be readily be seen that this greatly in excess of any interest rates offered by lending institutions. It is clear therefore that the beneficiary should try if at all possible and borrow the funds in order to pay the CAT rather than to use this method.

It should also be pointed out that there is a claw back aspect to the statutory instalment method. If there is a sale or compulsory purchase of the real property inherited or gifted absolutely on which the beneficiary is paying CAT by instalments then any tax which is outstanding together with interest becomes immediately payable when the sale completes. This does not of course apply to where beneficiaries' interests only extend to a limited interest as the trust in this situation continues to exist. With agricultural property and/or business property

the method of paying by instalments does not come to an end if a sale occurs within the instalment period provided that the proceeds of sale are reinvested in other agricultural and/or relevant business property within a year of the sale or 6 years from the compulsory purchase order.

Non-Statutory Instalments

In certain instances where the payment by statutory instalment would cause financial hardship, Revenue can be persuaded and they may agree on a concessionary basis that the tax be paid by non-statutory instalments. Each case will be considered on its own merits and Revenue will take into account relevant matters such as the nature of the gift or inheritance. For example, if it comprises largely cash then they would not be likely to grant an instalment arrangement since they have also most pertinently perhaps look at the financial circumstances of an individual beneficiary.

It should be remembered that Revenue will still insist that the interest continues to accrue on the unpaid tax, payments will be applied against interest in the first instance, payments must be made on an agreed due date and the arrangement will be entered into on a without prejudice basis.

Registration of the Debt as a Voluntary Judgment Mortgage

There will be cases where the payment of the tax by either of the above two methods may cause excessive hardship to a beneficiary, for example, it may involve the sale of the family home. In such circumstances and strictly on a concessionary basis the Revenue may agree to postpone the payment if the beneficiary will agree to the registration of the debt to Revenue as a voluntary judgment mortgage on the property in question. It will not mean the Revenue will waive the interest and interest will continue to accrue on the CAT liability due. Where one is dealing with the case of a life tenant of a property, the interest in this situation must be discharged by the life tenant and not the trust. When the successor dies the tax and interest due will be collected either by the discharge of the tax or sale of the property.

The conditions which must be satisfied before this concession will be granted are as follows:

1. There must be a filed fully completed and assessed tax return.
2. The beneficiary must be aware that there will be a charge on the property and should be fully advised as to the nature of the charge and how this will effect the property.
3. The actual grounds of hardship upon which the beneficiary seeks to rely must be detailed and these grounds must be evidenced by the beneficiary providing relevant details such as age, health, income, outgoings, assets and liabilities.

Common Law Spouses – Section CATCA 2003

There is not in Ireland at present any co-habitee legislation and therefore there is no such thing in Ireland as a common law spouse either in law or for tax purposes. A common law spouse is regarded for tax purposes as a Stranger in Blood and therefore can only benefit from the Group C threshold for CAT purposes which currently stands at €27,127.00. If a common law spouse has inherited a property from their partner this threshold will very quickly be exhausted. If there are no other reliefs available then a surviving common law spouse and their family may find themselves in a very onerous situation.

Any individuals who find themselves in such a situation should take further legal advice in order to ascertain whether Section 59 of the CATCA Act 2003 will apply. Briefly these are hardship provisions and the Revenue Commissioners must be satisfied that if the tax is to be paid in any given set of circumstances that it would cause excessive hardship if paid at once and if they so agree they may allow the payment to be postponed for such a period and on such terms as they think fit.

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