

IRISH INHERITANCE TAX - NON-RESIDENT'S PERSPECTIVE

Overview of Inheritance Tax

Unlike in other jurisdictions such as the UK, Inheritance Tax (Capital Acquisitions Tax) in the Republic of Ireland is a tax on the Beneficiary not on the Estate of the deceased person. The tax is charged on the taxable value of the inheritance. Once the taxable value of the inheritance has been determined, the amount of tax payable will depend on whether the appropriate tax free threshold ("Threshold Amount") has been exceeded. The rates of tax are as follows:

The Threshold Amount - 0%

Excess - 25%

As of 2011, the Threshold Amounts are:

Group A - €332,084

Group B - €33,208

Group C - €16,604

Generally speaking, the applicable group threshold is ascertained by reference to the relationship of the Beneficiary to the deceased person. Group A relates to sons and daughters. Group B typically relates to parents, brothers, sisters, nieces, nephews and grandchildren. Group C relationship other than Group A or B.

Pay and File

In the normal course, the obligation to pay and file the Inheritance Tax Return is triggered by a date known as the "Valuation Date". The Valuation Date for inheritances in the normal course means the date of ascertainment of the residue or other benefit and of its retainer for the benefit of the Beneficiary. This definition is complex and as a general rule of thumb, the Valuation Date tends to be the date of the Grant of Probate or Letters of Administration. Inheritances with a Valuation Date in the 12 month period ending on the previous 31st August should be filed by the 31st October in any particular year. This means that if the Valuation Date arises between the 31st January and the 31st August, the pay and file deadline would be the 31st October in that year and where the Valuation Date arises between the 1st September and 31st October, the pay and file deadline would be 31st October in the following year.

There are various surcharges, interest and fines payable in the event of failure to pay and file on time. Although it is outside the scope of this article, it should be noted that there may be certain reliefs and exemptions available to taxpayers which may have the effect of reducing your liability, e.g. business relief or agricultural relief.

Non-Resident Beneficiaries and Personal Representatives / Executors

Special rules apply in order to ensure that non-resident beneficiaries make returns and pay their tax. Where the Personal Representative or Executor of the Estate is Irish resident, then that person is obliged to ensure that the Beneficiary discharges the tax and if the Beneficiary fails to do so, the Personal Representative can be personally assessed for the tax. In order to allow the Personal Representative to discharge the tax, such Personal Representative has the power to sell the asset to which the non-resident Beneficiary is entitled.

In the event that some or all of the Beneficiaries are non-resident and the Personal Representative or Executors are also non-resident in Ireland, then under Section 48(10) of the Capital Acquisitions Act (as amended by the Finance Act 2010) requires such Personal Representative or Executor to appoint a solicitor who is lawfully practising in Ireland to act in connection with the administration of the deceased person's Estate. The Probate Office will not issue a Grant of Probate or Letters of Administration without such a solicitor having been so appointed. From the solicitor's viewpoint, this gives rise to substantial additional risk as such solicitor is then deemed to be an assessable person for the purposes of the tax should the non-resident Beneficiary fail to make a return and pay the tax. Once again, the solicitor's exposure to assessment is limited to the amount of assets under his or her control to which the Beneficiary is entitled and, furthermore, a solicitor has the power under the Act to sell those assets in order to discharge the taxes.

In the event of such a sale, not only will the underlying tax be paid, but obviously significant surcharges and interest will have accumulated due to the failure of the person primarily responsible in filing and paying their taxes.

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