

TRANSFER OF A SITE TO A CHILD

What are the CGT and Stamp Duty Implications?

Up until 6th December 2000, a transfer of a building site by a parent to a child gave rise to a Capital Gains Tax charge for the parent and a Stamp Duty liability for the child. Despite the fact that no money changed hands, the Revenue Commissioners deemed that the transaction took place at market value and assessed tax accordingly. Up until the 6th December 2000, these tax liabilities would not arise if the property passed to the child on the death of a parent. The Government felt that this position encouraged parents to postpone the transfer of a building site to a child so an exemption was introduced to overcome this perceived resistance.

Capital Gains Tax

The parent will not be obliged to pay Capital Gains Tax provided the following applies:-

1. The market value of the site at the time of transfer does not exceed €500,000. (€254,000 for transfers executed on or after the 1st January 2002 and before the 5th December 2007) (£200,000 prior to the 1st January 2002).
2. The Transfer must be from a parent to a child of that parent
3. The Transfer must be for the purpose of enabling the child to construct a dwelling house on the land which would be occupied by the child as his/her only or main residence.
4. There is a clawback provision that provides that the exemption will be withdrawn if the child subsequently disposes of the land, otherwise than to his or her spouse and at the time of the disposal the land does not contain a dwelling house which was:-
 1. Constructed by the child since he or she acquired the land
 2. Has been occupied by the child as his or her only main residence for a period of three years. Should the clawback occur, the Capital Gains Tax liability effectively becomes the liability of the child. It should be noted that the Capital Gains Tax exemption is a once in a lifetime relief and a parent cannot repeat the process of giving a site to the same child again in the future and hope to avail of the exemption.

Stamp Duty

From the child's view point they would ordinarily be liable to Stamp Duty on the market value of the site. To obtain the Stamp Duty exemption contained in Section 83 of the Stamp Duty Consolidation Act the following conditions must be fulfilled:-

- a) The market value of the site at the date of transfer cannot exceed €500,000 (€254,000 for instruments executed on or after the 1st January 2002 and before the 5th December 2007) (£200,000 prior to the 1st January 2002).
- b) The transfer must be of the entire beneficial interest in the site.
- c) The transfer must be from a parent to a child of that parent. The purpose of the transfer must be to enable the child build his or her only or main residence on the site.
- d) The transfer is the first and only qualifying transfer to that child.
- e) The Deed must contain the statement certifying that the above conditions are met.

One anomaly is that the Stamp Duty exemption does not contain a claw back provision so therefore there are no circumstances on which the stamp duty exemption can be lost or withdrawn.

Definition of Site

A "site" means land comprising both the area of land on the which the child's principal private residence is to be constructed and an area of land for occupation and enjoyment with the residence which does not exceed 0.4047 hectares (i.e. one acre). It does not include an area of land on which there is a building which, at the date of the instrument of Conveyance, transfer or lease

- a) Was used or was suitable for use as a dwelling or for other purposes, or
- b) Was in the course of being constructed or adapted for use as a dwelling or for other purposes.

The exemption also applies to a foster child. A foster child is a person being a transferee or lessee, who, prior to the date of execution of the instrument in respect of which an exemption from duty is claimed, has resided with, was under the care of and was maintained at the expense of the transferor or, as the case may be the lessor throughout –

- a) A period of five years, or
- b) Periods which together comprised at least five years.

prior to that person reaching 18 years of age but only if the claim for exemption is not based on the uncorroborated testimony of one witness. This extension of the exemption to the foster child applies to instruments executed on or after the 31st March 2006.

I should be noted that if the site value exceeds €500,000 the exemption will not apply and Stamp Duty is charged on the entire market value of the site.

Sons/Daughters-in-law

It should be noted that in order to avail of the exemption under Capital Gains Tax and Stamp Duty the Deed of Transfer must be to the child only and that the exemption cannot be obtained if the transfer is made jointly to a child and his or her spouse. A simple tax planning mechanism to get around this is to transfer the site into the child's sole name initially and then the child can subsequently transfer the site into the joint names of his or her spouse without triggering a clawback. The transfer of a family home between spouses does not give rise to further Capital Gains Tax or Stamp Duty liabilities due to the benign tax treatment of such transactions between spouses. It should be noted that this tax planning arrangement would not work in respect of partners or engaged couples.

While this tax planning opportunity has been in existence for some years at this stage, it could be said that the exemptions are not being utilised to their full capacity as they are not commonly known among members of the public. Once again, it proves the wisdom of always seeking professional advice at the earliest possible stage of considering any transaction.

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