The CPD Fest 2020

Succession or Sale: The Tax Considerations Presentation

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Sale or Succession – The Tax Issues

Presented by

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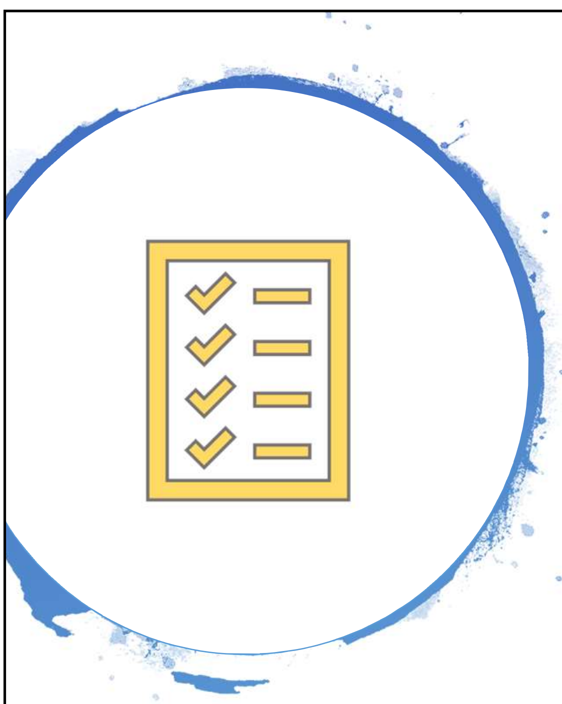
1



What are we covering?

- Exit Issues
- Succession Issues
- Other Opportunities

2

Exit Issues

Entrepreneur Relief

Retirement Relief

Anti-Avoidance

3

Reliefs on Exit from a Company

Exiting a company involves the disposal of shares from a company. As the disposal of shares constitutes the disposal of a capital assets, relief from capital gains tax may be available.

1. Retirement Relief
   - Relief on disposal of chargeable business assets - TESTS
   - Lifetime threshold between €500k and €750k – exempt (marginal relief)
2. Entrepreneur's Relief
   - Relief on disposal of chargeable business assets - TESTS
   - Lifetime threshold €1,000,000 @ 10% (balance above €1m at 33%)
3. Participation Exemption
   - Holding period
   - Complete exemption
   - Shares meeting certain criteria

4

Reliefs on Exit from a Company

Overview of Relevant Tax Reliefs

- Review of relevant reliefs on an exit from a business
- Review of relevant conditions for relief

Case Studies

- Six case studies looking at various issues arising on meeting Entrepreneur Relief conditions
- Tax trips and tips to qualify for Entrepreneur Relief

Anti-avoidance on funding an exit

- Overview of Section 135 TCA
- Review of main practical issues relating to amendments
- Examples of transactions when Section 135(3A) may have application

5

Exiting a Company as a Shareholder

Exiting Mechanisms:

The market for shares in a private company is limited usually to the following:

- Existing shareholders
- Company itself
- Third party
- MBO team

6

Revised Entrepreneurs Relief

S.597AA TCA 1997

What is the relief?

- Reduced capital gains tax rate on qualifying disposals
- Current lifetime limit of €1,000,000
- Current maximum saving is €230,000

When does it apply?

- Disposal
  - of chargeable business assets
  - by a relevant individual
  - on or after 1 January 2016

7

Revised Entrepreneurs Relief

What are chargeable business assets?

- Defined in section 597AA(2)
  - ✓ Assets used for the purposes of a ***business*** other than the:
    - holding of securities or other assets as investments
    - holding of development land
    - development or letting land
  - ✓ Goodwill
  - ✗ Shares*, securities or other assets held as investment assets
  - ✗ Development land
  - ✗ Assets on the disposal of which no chargeable gain would arise
  - ✗ Assets used for "bad" trading activities listed above

8

Revised Entrepreneurs Relief

Who is a relevant individual?

- Individual
- *Beneficial owner* of the chargeable business assets
- For a *continuous period* of at least 3 years during previous 5 years
    - Cannot aggregate periods of ownership
- Additional criteria for shares
- Finance Bill 2020 – shares must be held for any continuous 3 year period (effective 1 Jan 2021.)
- Interaction with section 586 & 587 – period of ownership of "old shares" taken into account
- Transfers between spouses - can period of ownership of spouse be included?

9

Revised Entrepreneurs Relief

Shares as qualifying assets

What type of company qualifies for relief?

- Company whose business consists wholly or mainly of carrying on a ***qualifying business***

  or
- ***Holding company*** of a ***qualifying group***

Definitions

- Qualifying business - any business other than the holding of securities or other assets as investments, holding of development land, developing or letting land
- Holding company – company whose business consists wholly or mainly of holding of shares in companies which are its 51% subsidiaries
- Qualifying group – group where business of each 51% subsidiary (other than holding companies) is a qualifying business

NB: Test applied on a company by company basis – not "wholly or mainly trading group"

10

Revised Entrepreneurs Relief

Qualifying person

- An individual who is or has been a director or employee of the company
  - not less than 50% of their *working time* in the service of that company, and
  - served for *continuous period* of at least 3 years during previous 5 years

Working time

- Any time the employee is
  - At their place of work, or at the employers disposal, and
  - Carrying on / performing the activities of their work

11

Revised Entrepreneurs Relief

Liquidations

- Revenue concession on company liquidations provided:
  - the trading company was trading up to the time of the appointment of the liquidator, and
  - The liquidation is completed within a reasonable period of time – i.e. 2 years
- Does not extend to liquidation of holding company

Revenue Guidance – May 2017

- Subject to the conditions being satisfied relief can apply in the following situations:
  - Share buy back where the buy back is within the charge to CGT
  - Double holding company structures
  - Partnership assets where the individual is actively involved in the business

12

Revised Entrepreneurs Relief

Relief shall not apply

- to sales of goodwill to connected company
- to a sale of shares to a company where after the sale vendor is still connected to company in which the shares were sold

Above restrictions do not apply to bona fide commercial sales not carried out to avoid tax

13

Revised Entrepreneurs Relief

Example 1

- John holds 100% of JCo Ltd
- He subscribed for €1,000 of shares
- JCo manufactures and sells widgets
- John has held the shares 3 years and worked full time for 3 years in JCo.
- John sells shares for €1.3m

	€
Consideration	1,300,000
Base cost	1,000
Chargeable gain	1,299,000
Less annual exemption	1,270
Taxable gain	1,297,730
CGT €1m @ 10%	100,000
CGT balance @ 33%	98,251
Total CGT	**198,251**

14

Revised Entrepreneurs Relief

Shareholding

- Must hold not less than 5% of ordinary share capital
  - OSC defined as *"all the issued share capital (by whatever name called) of a company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other rights to share in the profits of the company"*
  - The legislation does not specify if it is the number or the nominal value of the shares in issue that should be considered when calculating the 5% shareholding test

Example 2

- Company has issued share capital of €105,000, nominal value as follows:
  - ➢ 100 A ordinary shares with a nominal value of €1,000 each (€100,000 NV)
  - ➢ 5,000 B ordinary share with a nominal value of €1 (€5,000 NV)
- If Tom holds all of the B ordinary shares – total share capital of €5,000 NV – does he hold 5% of the issued ordinary shares? No!
- Case law indicates nominal value is used.

15

Revised Entrepreneurs Relief

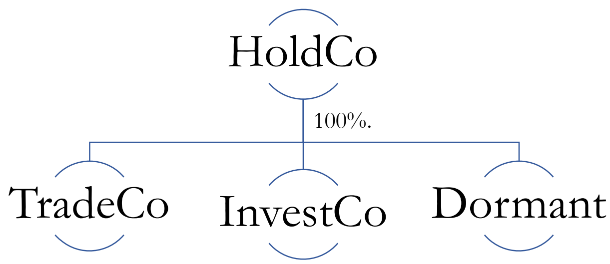
Example 3

- Tom & Mary incorporated their company in 2016 with 100 €1 ord shares, (50 shares each)
- In January 2020 they raised EII investment - company allotted 500,000 €1 A ordinary shares with typical EII share rights (i.e. limited rights)
- Tom & Mary have been approached to sell their shares. Buyer willing to leave the EII investors in-situ.
- Do they qualify for ER ? In 2020 – No they hold 50 / 500,100 < 5% of the issued share capital. *McQuillan v HMRC*
- If they make disposal in 2021 they will qualify due to the Budget change – have held not less than 5% of OSC for 3 consecutive years any time prior to disposal

16

Revised Entrepreneurs Relief

Example 4 – Groups



Dormant or investment companies in a group disqualify the shares in the holding company from ER

17

Revised Entrepreneurs Relief

Example 5 – Groups

1) Do the shares in the holding company qualify for ER?
2) Does the sale of the property used for the business qualify for ER?

Property held personally and used for the trade of TradeCo

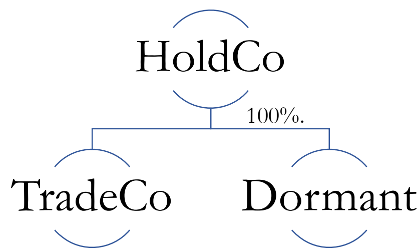
1) Yes – all of its subsidiaries are wholly trading
2) No. The property is not being used to carry on a qualifying business of the property owner

18

Revised Entrepreneurs Relief

Example 6 – Groups

Do the shares in the holding company qualify for ER?



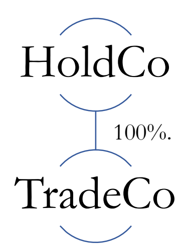
No. This is not a qualifying group as defined – all of its 51% subsidiaries are not wholly or mainly carrying on a qualifying business, i.e. the dormant company disqualifies it.

19

Revised Entrepreneurs Relief

Example 7 – Groups

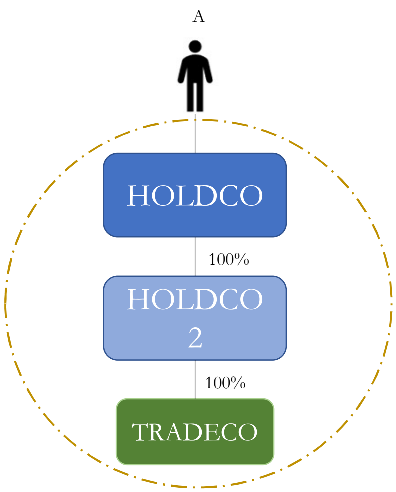
- Shares in the Trading company are sold for €1m.
- Hold co qualifies for participation Relief
- The liquidation of Holding company does not qualify for ER as it is no longer a qualifying Holding company
- CGT of €330k arises on the liquidation
- Therefore should look to sell the shares in the Holding company and not the Trading Company
- CGT on sale of HoldCo is €100k. Saving is €230k



20

Case Study

Shares as qualifying assets - Liquidation



Disposal of shares by A

- Group comprises HoldCo, HoldCo2 and TradeCo
- Group is a qualifying group
- ER may be available
- 2 Options:
  1. Sell trade and receive proceeds into Tradeco and dividend up and liquidate
  2. Sell shares in tradeco and receive proceeds into Holdco2 and dividend up and liquidate
- **No relief in either scenario above**

21

ER Guidelines – Questions for Relief

Entrepreneur relief conditions

1. Does one own 5% or more of Ordinary shares personally
2. Has one owned them for 3 years or more
3. Has one worked more than 50% of ones time in the business in 3 years prior to sale
4. Are the shares, shares in a company carrying on a *qualifying business* or a holding company of a *qualifying group*

If YES to all 4, then 10% CGT rate on first €1m of gains per person

22

Interaction with Retirement Relief

Entrepreneur relief and retirement relief often apply in tandem

John has held JCo shares 10 years, 10 years FT working, trading company

Sells shares for €900k, no base cost

ER applies 10% rate of CGT, RR relieves the CGT

Although ER provides no relief, €900k of John's ER threshold is utilised

	€
Gain on disposal (assume no base cost)	900,000
CGT @ 10% with ER	90,000
Marginal relief with RR	75,000
CGT limited to lower of actual or 50% of excess above €750k	
CGT in this case	**75,000**

23

Retirement Relief

S.598 & S.599 TCA 1997

Main conditions

- provides relief from CGT disposals where:
  - individual making disposal is **55 years** or over
  - Disposal is of qualifying assets or shares in a family company (determined by voting rights)
  - Must be shares in a wholly of mainly trading company, or
  - Assets held and used for the purpose of the business for at least 10 years (watch inter-spouse transfers)
  - Director for 10 years – full-time working director for 5 years (watch spouses)

  - Investment assets do not qualify for relief

24

Retirement Relief

What is the relief?

- Two forms of retirement relief:

1. Disposal to third party
   - €750k lifetime consideration threshold (€500k for 66 y.o.a and above)
   - Relief can be clawed back if proceeds exceed €750k/€500k
2. Disposal to child
   - No upper limit on disposals to child for under 66 y.o.a
   - Relief is €3m on disposal to child for those aged 66 y.o.a
   - Relief clawed back if child disposes of assets within 6 years

25

Retirement Relief - Pitfalls

Distribution in specie

- Retirement relief not available on distribution of chargeable business asset in specie e.g. property
- Revenue pick up on this in practice
- Charge to CGT would arise for shareholder on value of property distributed
- Solution:
  - Dispose of property to shareholder
  - Stamp duty cost arises
  - Distribute proceeds of disposal to shareholder – retirement relief should be available
  - CGT avoided

26

Investment Assets and Dilution of Reliefs

- a qualifying business must be a business operated for profit and not carrying on a business consisting wholly or mainly of dealing in land, shares, securities or currencies or of making or holding investments.
- if the shares derive part of their value from investment assets (i.e. non trading assets) the relief available will be restricted accordingly
- **if more than 50% of the value of the company is derived from investment activities <u>then there is no relief available</u>.**

27

Participation Exemption

S.626B TCA 1997

Main conditions

- in certain circumstances, full relief from CGT available to Irish holding companies in respect of gains arising on disposal of shares in certain subsidiaries, provided:
  - the holding company must hold at least 5% of the ordinary shares in the subsidiary for 12 months at any time within the 2 years prior to disposal;
  - the holding company must also be beneficially entitled to 5% of the profits of the subsidiary and 5% of the assets on a winding up of the subsidiary;
  - the subsidiary company must be tax resident in the EU or in a country with which Ireland has a double tax treaty; and
  - the subsidiary must be an active trading company or part of a trading group
  - the shares in the subsidiary must not derive **<u>their value or the greater part</u>** of their value directly or indirectly from Irish land.

28

Anti-Avoidance

S. 135 TCA 1997

- Deals with distributions for income tax
- Section 23 Finance Act 2017 introduced anti-avoidance measures to target certain "mischiefs"
- Section 135(2A) TCA 1997 disallows new consideration on a share for share transaction allowing an uplifted base cost for the shares that are held as part of the reorganisation
- Section 135(3A) TCA 1997 seeks to charge to income tax certain payments in relation to the disposal of shares in a close company where the shares are acquired by another close company and the funds for the acquisition are essentially provided by the target company

29

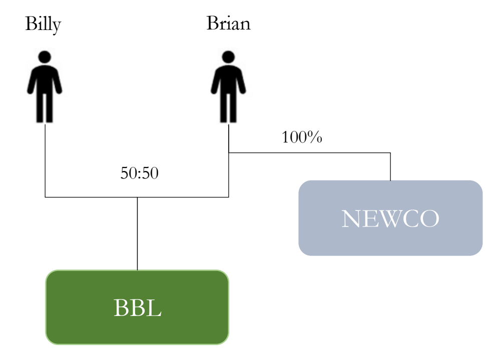
Anti-Avoidance

- Issues
  - Broadly drafted
  - Captures transactions that are bona fides commercial transactions that were not apparently targeted
  - No bona fides test
  - Revenue Guidance (not legislation on bona fides)
  - Number of transactions that appear to be caught in the legislation:
    - Management Buyouts, EIIS Exits, Share Scheme Exits, Deferred Consideration, Bona Fides Exits of Retiring Shareholders

30

EXAMPLE 1

Brian forms a new company



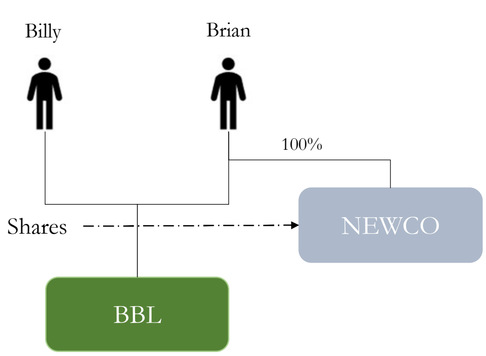
Facts

- Brian sets up a new company (Newco)
- Newco is to purchase Billy's shares

31

EXAMPLE 1

Billy sells his shares to NEWCO (Payment deferred)



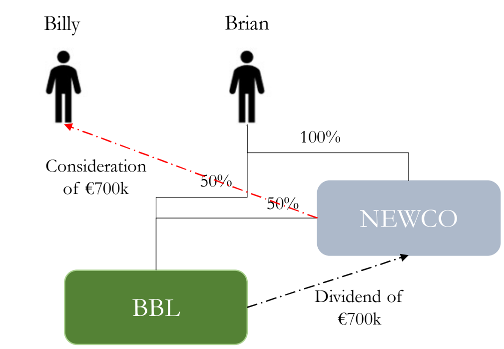
Facts

- NEWCO purchases shares for €700k with consideration left outstanding

32

EXAMPLE 1

Dividend to NEWCO and Payment to Billy



Facts

- BBL subsequently pays a dividend of €700k to Newco
- Newco discharges the consideration for the shares

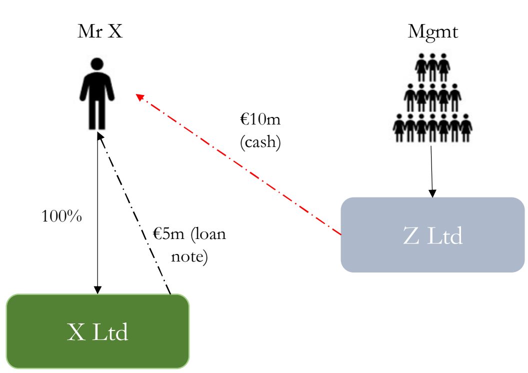
Consequences

Section 135(3A) applies so that the €700k is taxed as an income distribution in the hands of Billy as the consideration was part of an arrangement by Brian to secure consideration to be paid to Billy and the assets of BBL have been depleted

33

EXAMPLE 2

Mr X wants to sell his business to the Management Team



Facts

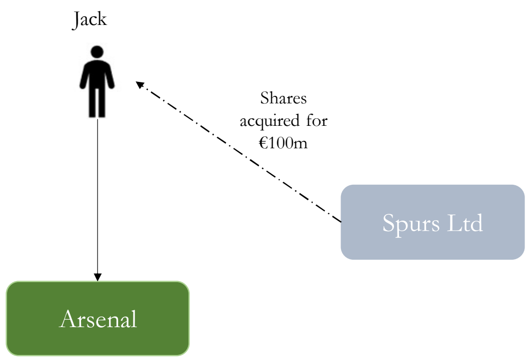
- X Ltd (TradeCo) is owned by Mr. X
- Management wish to buy out Mr. X and establish Z Ltd
- Consideration for acquisition = €10 million plus €5 million in loan notes (issued by X Ltd)
- 3 years later X Ltd redeems loan notes

Consequences

- Once consideration has been paid, there should be no look-forward approach as 135(3A) is applied on the point of payment of the consideration
- Accordingly, subsection (3A) should not apply

34

EXAMPLE 3



Facts

- Arsenal Limited is owned by Jack
- Spurs Limited is also a close company
- The acquisition of the shares in Arsenal Limited is financed by bank loan of €100m
- Arsenal is very profitable over next few years
- Arsenal pays dividends to Spurs Limited to allow bank loan to be repaid

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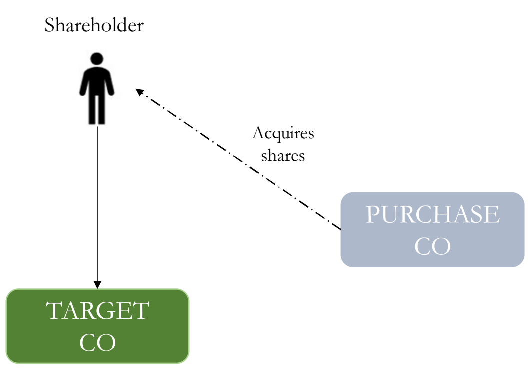
Question

Does Section 135(3A) catch this transaction?

35

EXAMPLE 4



Facts

- Both close companies
- Deferred consideration for acquisition of shares of exiting shareholder to be paid in three tranches:
  - X on completion
  - Y after 12 month
  - Z after 24 months
- Cash reserves of Target company may be needed to fund elements Y and Z of the deferred consideration

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Question

Does Section 135(3A) catch this transaction?

36

KEY POINTS

Section 135 TCA

- Must be considered for every transaction that involves a close company and the exit of a shareholder
- Bank funding should be considered in all circumstances where there is a doubt as to the application of the section
- Building cash reserves on a balance sheet should be reviewed

37

Key Opportunities & Pitfalls

- Exit strategy key to any planning
- Watch 5% and >50% ordinary share capital conditions
- Check historic disposals of chargeable business assets
- Section 135 must now always be considered where shares being sold
- Timing is crucial where a number of disposals and managing tax relief
- Commercial rationale should be discussed and documented
- Group structure and shareholders must be carefully examined
- Spouses and opportunities examined early in exit planning

38

Succession Planning

- Business Asset Relief
- Agricultural Relief
- CGT/CAT Offset
- Favourite Nephew/Niece

39

Succession Planning

- Succession planning becoming a concern even for modest estates
- Estate of €2m with 2 children – CAT = c. €439k
- Important to make use of reliefs, main reliefs are:
  - Retirement relief
  - Business asset relief
  - Agricultural relief
  - Dwelling house relief
  - CAT/CGT offset
  - Favourite Nephew/Niece Relief

40

Succession Planning – General Points

- Three main tax heads to consider on succession
  - CGT for the disponer at 33% (not on death)
  - CAT (gift/inheritance tax) for the beneficiary at 33%
  - Child can receive up to €335,000 from parent free from CAT (Group A threshold)
  - Stamp duty for the beneficiary 1% or 7.5% (not on death)

41

Succession Planning - Business Asset Relief

S.90 – 102 CATCA 2003

Main conditions

- Applies to gifts/inheritances of qualifying business assets
- Affect of relief is 90% abatement in taxable value of the gift
- Business must be valued at over €3.35m for CAT charge to kick in for child (group A threshold €335k)
- Does not apply to investments assets e.g. rental property
- No age requirement unlike retirement relief
- No relationship requirement
- Assets must have been held by disponer for 2 years for inheritance and 5 years for gift

42

Succession Planning - Business Asset Relief

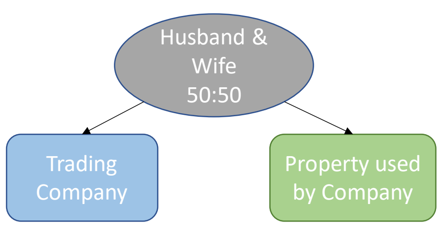
Main conditions

- For companies – control of 25% of voting, or family control or if employee 10% of share capital
- Relief can apply to assets owned personally and used by trading company (see next slide)
- Subject to clawback if recipient makes disposal within 6 years
- Relief also clawed back if business is no longer carried on
- Reinvestment within 1 year can avoid the clawback if business asset is sold
- Can apply to farm assets (perhaps not hobby farm assets though nor to farmhouse)

43

Succession Planning - Business Asset Relief

Finance Act 2014



- Prior to Finance Act 2014 if property and shares were transferred to a beneficiary the property did not qualify for business asset relief
- The disponer must have had "control" of the company
- Post Finance Act 2014 the shares and property would be eligible for business asset relief as husband and wife can aggregate *control*
- Old potential pitfall still remains if *control* not held

44

Succession Planning - Business Asset Relief

Example 1

- Trading company good asset mix
- Sample balance sheet €

Fixed assets	1,500,000
Debtors	1,000,000
Stock	1,200,000
Cash	500,000
Total assets	4,200,000
Total liabilities	(700,000)
Net assets	3,500,000

- Assume company value is €3,500,000 – parent to child transfer of entire shareholding

45

Succession Planning - Business Asset Relief

Example 1

- Retirement relief available – no CGT (parent under 66)
- CAT analysis

	€
Value of company	3,500,000
Less stamp duty (1%)	(35,000)
Taxable value	3,465,000
BAR	(3,118,500)
Taxable gift	346,500
Group A threshold	(335,000)
Excess	11,500
Less small gift exemption	(3,000)
Taxable amount	8,500
CAT @ 33%	**2,805**

- In most cases very little CAT to be paid
- Stamp duty would be more costly (€35,000)

46

Succession Planning

Other options

- What can be done to make some cases more efficient:
  - Approved share buybacks (examined later)
  - Tax free termination payments to parents
  - Corporate pension contributions for parents/other directors
  - A few thoughts on company valuation:
    - Typically small companies valued on earnings or asset basis
    - Is the net asset basis appropriate?
    - Not worthwhile taking short cuts – penal surcharges of up to 30% for undervaluation
    - Minority discounting not allowed for CAT for family companies

47

Succession Planning - Pitfalls

Example 2

- Trading company holding investment assets/excess cash
- Sample balance sheet

	€
Fixed assets	200,000
Debtors	2,000,000
Stock	1,750,000
Investment assets (e.g. shares/rental)	200,000
Cash	2,000,000
Total assets	6,150,000
Total liabilities	(3,000,000)
Net assets	3,150,000

- Assume company value is €3,150,000 – parent to child transfer of entire shareholding

48

Succession Planning - Pitfalls

Example 2

- Impact of investment assets on retirement relief for parent
- Formula for calculating level of relief available

$$\frac{\textbf{Chargeable business assets}}{\textbf{Total chargeable assets}}$$

- Chargeable business assets = fixed assets
- Chargeable assets = fixed assets + investment assets

$$\frac{\textbf{€200,000 (fixed assets)}}{\textbf{€400,000 (fixed assets + investment assets)}}$$

- Result is that only half of the value of company eligible for relief

49

Succession Planning - Pitfalls

Example 2

- Solution for CGT in this case would be to convert the investments into non-chargeable assets – e.g. sell the investment for cash/debtor
- Possible to sell to shareholder/connected company and buy back at later date
- Where investment is non-liquid in type it is possible to undertake a reconstruction of the trade (examined later)
- Main issue in this case for BAR purposes is the investment assets and excepted assets (excess cash)
- Excess cash is a contentious area – how do you prove excess cash is required for the business
- Number of UK cases on this topic, none definitive
- Often looked at in hindsight as with all audit cases
- Other assets not in use for the purpose of a business are also not eligible for relief
- In this case assume that €500k is working capital

50

Succession Planning - Pitfalls

Example 2

- Impact of investment assets on BAR
- In this case assume that €500k is working capital

	€
Value of company	3,150,000
Less excepted assets	(1,700,000)
Eligible for BAR	1,450,000
BAR	(1,305,000)
Add excepted assets	1,700,000
Taxable gift	1,845,000
Group A threshold	(335,000)
Taxable amount	1,510,000
CAT @ 33%	**498,300**

51

Succession Planning - Pitfalls

Example 2

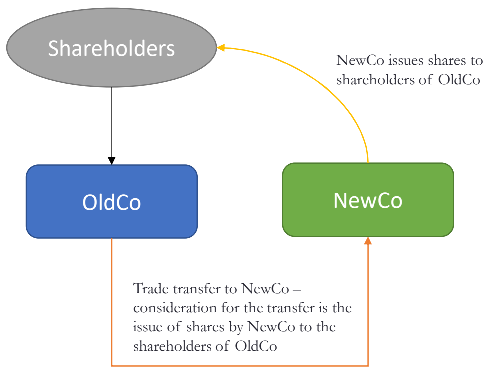
- Lack of full analysis and planning can lead to adverse tax consequences
- Big problem would actually be funding the liabilities
- In this case tax liability would be circa €498k overall (due to CGT/CAT offset)
- Tax would often be doubled due to the need to withdraw funds from the company to pay the tax (i.e. income tax cost)
- Total tax cost on the transfer circa €1m – not a happy client!
- What is the possible solution assuming client wants to transfer all assets?

52

Succession Planning - Pitfalls

Example 2

- Hive out of trade leaving non-eligible assets and some liabilities behind – share for share exchange



Post Reconstruction

- Balance sheet

	(NewCo) €	(OldCo) €
• Fixed assets	200,000	
• Debtors	2,000,000	
• Stock	1,750,000	
• Investment assets		200,000
• Cash	500,000	1,500,000
• Total assets	4,450,000	1,700,000
• Total liabilities	(1,300,000)	(1,700,000)
• **Net assets**	**3,150,000**	**Nil**

- NewCo – clean company eligible for full relief from tax on transfer (other than SD)
- OldCo – of no value – no taxes on transfer

53

Succession Planning - Pitfalls

Example 2

- Restructuring can be achieved free from CGT for shareholders and company
- Stamp duty relief also available
- Revenue approval possible
- Periods of share ownership and directorship transfer to the new company for retirement relief etc
- Transferring of significant trades can be onerous at times:
  - Supplier/customer contracts
  - Staff
  - Property transfers and possibly bank debt
  - Good solicitor crucial to the process

54

Succession Planning - Agricultural Relief

S.89 CATCA 2003

Main conditions

- Applies to gifts/inheritances of agricultural assets
- Land/farmhouse/woodland/farm buildings/machinery/livestock/payment entitlements
- Market Value of agricultural assets reduced by 90%
- Farm worth €3.35m on parent to child transfer – no CAT if group A threshold intact
- Donee must satisfy
  - the farmer test i.e. 80% of assets post gift/inheritance must be agricultural assets, and
  - The 'active farmer' test
- Cases where farmer test is below 82% likely to be checked by Revenue
- All assets taken into account
- Gross asset values taken excluding debts (mortgage on PPR)

55

Succession Planning - Agricultural Relief

Active farmer

- Finance Act 2014 changes – valuations dates from 1 January 2015
- Farmer must be an "active farmer" or lease land to "active farmer"
  - Active farmer – not less than 50% of normal working time farming on a commercial basis
    - Requires 20 hours per week average – what records?
  - Trained farmer – relevant qualification – "green cert"
  - 6 year requirement, land can alternate between farmed and leased/tenant can change in exceptional circumstances
- Land can be leased to a farming company provided shareholder/director is actively farming
- Allowance is made for:
  - An individual obtaining the relevant qualifications within 4 years of the gift or inhertiance
  - activities such as forestry where little work done each year (by concession)

56

Agricultural Relief

Example – Farmer test

- Jack has the assets listed in the table below
- His father is to gift him a farm and farm buildings worth €2.2m, farm machinery worth €100,000 and a straw bales worth €20,000
- How is the farmers test calculated for Jack?

Asset	Value €	Debt €
Off farm PPR	300,000	200,000
Car	25,000	15,000
Cash	30,000	
Rental Property	130,000	70,000

57

Succession Planning - Agricultural Relief

Example – Farmer test

Asset	Value €	Debt €	Agri Asset €	Non-Agri Asset €
Off Farm PPR	300,000	200,000		100,000
Car	25,000	15,000		25,000
Rental Property	130,000	70,000		130,000
Farmland	2,200,000		2,200,000	
Farm Machinery	100,000		100,000	
Straw Bales	20,000			20,000
Total			**2,300,000**	**275,000**

- Total assets = €2,575,000. Agricultural asset = €2,300,000
- Farmer test = €2,300,000 / €2,575,000 = **89.3%**

58

Succession Planning - Agricultural Relief

Farmer test

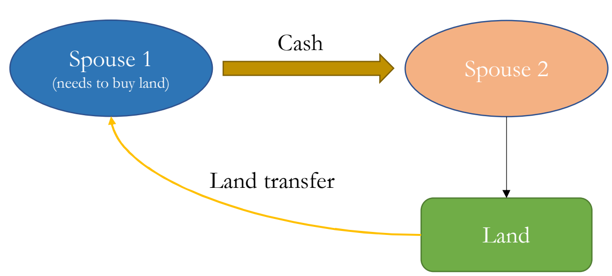
- Client that does not satisfy the farmer test due to asset mix
- Agricultural assets must equal at least 80% of total assets
- Father wishes to gift farm worth €2m to son
- Son has non agricultural assets worth €700k
- Farmers test not satisfied (74%) – potential CAT liability circa €500k
- Ways forward?
  - Claim business asset relief – similar result but assets such as farmhouse would not qualify for relief
  - Can son divest himself of the assets – gift assets to spouse?
  - Son could also swap a portion of his assets with his father for land such that farmers test satisfied – gift the balance

59

Succession Planning - Agricultural Relief

Conditional gift/reinvestments

- Conditional gift or re-investment
- No taxes on transfer – re-investment/investment satisfied
- Cannot buyback land from a spouse for reinvestment



60

Succession Planning - Dwelling House Relief

S.86 CATCA 2003

Conditions

- Finance Act 2016 restricted this relief
- Provides a complete exemption from CAT for beneficiary where the
  - Dwelling house is the only or main residence of the disponer at the date of death
  - Dwelling house is the Only or main residence of the beneficiary for 3 years immediately preceding the date of inheritance
  - Beneficiary does not have an interest in another dwelling house
  - Beneficiary retains the property for 6 years.

- No upper limit on value
- If proceeds from disposal are fully reinvested in another dwelling house the relief is retained
- Interest in other dwelling house – transfer to spouse?

61

Succession Planning - Dwelling House Relief

Example

- Mary is elderly and has a house
- Mary's daughter Karen is interested in the property
- Mary happy to live on her own
- How can Karen qualify for relief in this case?
- Mary in her will directs house to be left to discretionary trust
- Karen resides in house for 3 years while held by trust
- Subsequent appointment from trust to Karen
- Karen benefits from dwelling house relief

62

Succession Planning - CGT/CAT Offset

S.104 CATCA 2003

Conditions

- Offset of CGT against CAT is possible
- Taxes must arise on the same transaction e.g. a gift of property from parent to child
- 2 year hold period
- Sequencing of transfers is crucial
- See upcoming example

63

Succession Planning - CGT/CAT Offset

Example 1

- John holds a property worth €500,000
- Property originally cost John €200,000
- John gifts the property to his son Brian
- The CGT liability for John is €99,000 (€500,000-€200,000 @ 33%)
- Assume Brian's group A threshold has been used
- Brian has a CAT liability of €165,000
- Brian can offset John's CGT liability of €99,000 against his own CAT liability
- Net CAT liability is €66,000
- Brian must retain the property for 2 years

64

Succession Planning - CGT/CAT Offset

Example 2

- Father gifts cash €400k and asset of €500k to son – CGT liability on asset is say €100k

	€	€
Gift	400,000 (cash)	500,000 (asset)
Group A	(335,000)	(335,000)
Taxable	65,000	165,000
CAT @33%	21,450	54,450
CAT/CGT	n/a	(54,450)
CAT payable	21,450 **(A)**	Nil **(A)**
Gift	500,000 (asset)	400,000 (cash)
CAT @ 33%	165,000	132,000
CAT/CGT	(100,000)	n/a
CAT payable	65,000 **(B)**	132,000 **(B)**
Total CAT (A+B)	**86,450**	**132,000**

- **CAT saving of €45,550**

65

Succession Planning – Favourite Nephew/Niece Relief

Sch. 2, Paragraph 7, CATCA 2003

Conditions

- Entitled to the CAT Group A tax free threshold (currently €335,000), where the nephew/niece:
  - is a child of a sibling of the disponer
  - Has worked substantially on a full-time basis for 5 years prior to the date of gift or inheritance in carrying on or assisting in the carrying on, the trade, business or profession of the disponer
    - More than 24 house per week (15 hour per week where the business is carried on exclusively by the disponer, their spouse and the nephew/niece).
    - Beneficiary can not be employed full-time elsewhere
  - The gift/inheritance consists of business assets.

66

Succession Planning – Favourite Nephew/Niece Relief

Example 1

- Brian inherits his uncle's estate consisting of:
  - Business assets (pub) with a market value of €500,000 and stock of €25,000, and
  - Investments and cash of €100,000

- Brian satisfies the conditions for favourite nephew relief, he is therefore entitled to
  - The CAT Group A threshold for the business assets of €525,000, and
  - The CAT Group B threshold the investments and cash of €100,000

67

Other Opportunities

Share Redemption/Buyback

Share Scheme

Termination Payment

68

Tax Treatment of Share Redemption/Buyback

Main Tax issues:

a) Capital Gains Tax v income distribution in the hands of the recipient shareholder

b) DWT if income distribution

c) Stamp Duty for company

69

Tax Treatment of Share Redemption/Buyback

Capital Gains Tax

a) Section 130 TCA 1997 - an anti-avoidance provision countering arrangements whereby shareholders might extract profits from a company without attracting tax liability under Schedule F

b) Chapter 9 Part 6 TCA 1997 – permits CGT treatment provided the conditions set out in Section 176 TCA 1997 are met.

70

Tax Treatment of Share Redemption/Buyback

Conditions which must be satisfied under Section 176 TCA 1997:

1. Must be an unquoted trading company
2. Must have owned the shares for a period of at least five years ending on date of disposal
3. Shareholder must be both resident and ordinarily resident in the State
4. Wholly or mainly for the benefit of the company's trade
5. Remaining shareholding must not exceed 75% of what it was pre buyback
6. Must no longer be connected with the company

71

Tax Treatment of Share Redemption/Buyback

Wholly or Mainly for the Benefit of the Company's Trade

Revenue Guidance states where:

1. Disagreement between the shareholders over the management of the company
2. Purpose to ensure that an unwilling shareholder who wishes to end his/her association with the company

72

Tax Treatment of Share Redemption/Buyback

Wholly or Mainly for the Benefit of the Company's Trade

Revenue Guidance provides the following examples

a) An outside shareholder who has provided equity finance and wishes to withdraw that finance

b) A controlling shareholder who is retiring as a director and wishes to make way for new management

c) A legatee of a deceased shareholder, where she/he does not wish to hold shares in the company

d) Personal representatives of a deceased shareholder where they wish to realise the value of the shares

73

Tax Treatment of Share Redemption/Buyback

Stamp Duty

- No specific exemption
- Usual that the share purchase agreement is relied on to prove the transfer with no stock transfer form executed and therefore no document which to levy stamp duty
- Recognised by the Revenue Commissioners:

"The shares can be bought back on foot of a contract or share purchase agreement. If the shareholder and the company enter into an agreement and the shareholder simply hands over the share certificates to the company there is no need for a stock transfer form and no duty can be charged. The share purchase agreement is not chargeable to duty as it falls outside the scope of s31, Stamp Duties Consolidation Act 1999 (stamp duty on contracts)"

74

Growth Shares

Background

- A growth share increases in value as the value of the company rises.
- Growth share has nominal value on the day that it is issued.
- Growth share would be issued to the beneficiaries.
- Issue of growth share should be free from tax (valuation risk).
- Share grows in value in the hands of beneficiary - no CAT

75

Growth Shares

Actions

- Company must be valued
- Rights of new shares decided upon (non voting)
- Amend the constitution of company
- Issue the shares as desired
- Cap the value of the existing shares at current value

76

Tax Free Termination Payments (ex-gratia)

S.201 TCA 1997

Conditions

- Payments made in connection with the termination of an office or employment may be exempt from income tax, provided those being made redundant who have completed at least 2 years continuous service in that employment.

Exemptions

- The first 10,160 of any termination payment
- An additional €765 for each complete year of service
- The exemptions above may be increased by €10,000
  - Where the employee or office holder has not in the previous 10 years claimed any termination payment benefits and the employee or office holder is not a member of an occupational pension scheme (or has irrevocably given up the right to receive a lump sum from such a scheme).
- The Standard Capital Superannuation Benefit ("SCSB") may be available
  - Dependent on a number of factors but is reduced by tax free lump sums taken or available to take from occupation pension schemes.

77

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78