

WILLS & CAPITAL ACQUISITION TAX

BRENDAN TWOHIG CTA – MK Brazil
Webinar - 24th April 2024

abm financial advisers



EMAIL sean@abm.ie or ecoin@abm.ie
TELEPHONE 087 6322 333 or 087 6323 333

Wills & CAT:

- CAT – general introduction
- Reliefs & Exemptions – reminder of tax reliefs and similar
- Practical Examples – practice v theory considerations
- Summary / Q & A

(Tips and warnings along the way)

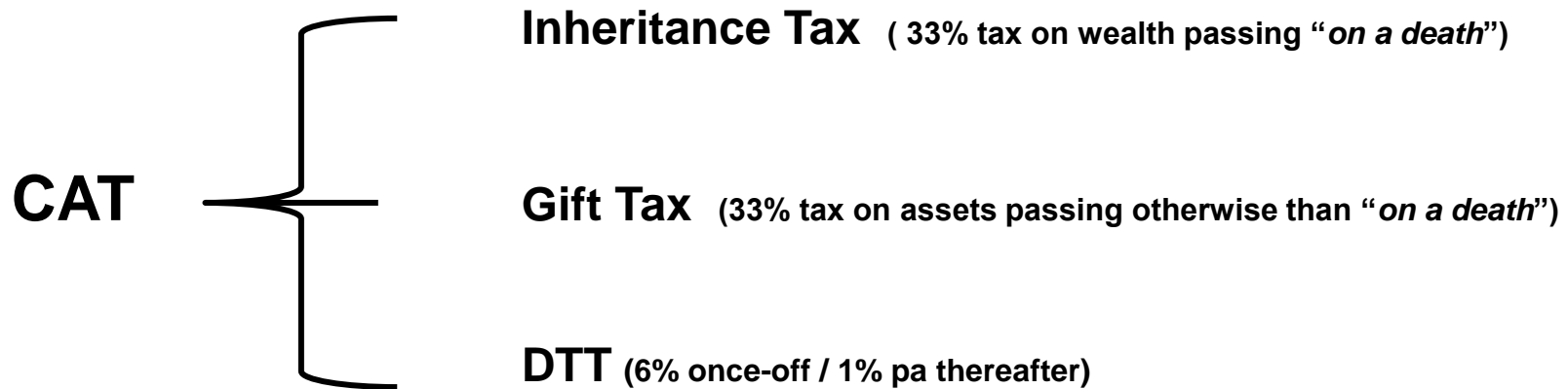
An Introduction To:

CAT

(Capital Acquisitions Tax)



Capital Acquisitions Tax – CAT:



- Language can be confusing but...

(Disponer, Settlor, Beneficiary, Donee, Testate/Intestate, Specific Legacy, Residue, Disclaimer, Absolute/Limited Interest, Beneficially Entitled ‘in possession’, Class Thresholds, Deed of Family Arrangement, Fixed Trust / Bare Trust / Discretionary Trust, etc etc)

Inheritance Tax – the Basics cont...:

- **CAT = ('Taxable Amount' – 'Available Threshold') x 33%**

Class A	Children (sometimes Parents, minor grandchild etc)	€335,000
Class B	Grandparent / Grandchild/Siblings/Nieces & Nephews (sometimes Parents)	€32,500
Class C	Everyone else (in-laws etc)	€16,250

- **Lifetime threshold** – accumulation of same-Class benefits (post 1991 really)

Inheritance Tax – the Basics cont...:

- CAT 'Tax Year' – 01/09 to 31/08 – Pay & File 31st October
- Date of Death (rate + threshold + CGT) – usually only one per case
- Valuation Date (value + when) – can be multiple in same case
- Testate (valid Will) v Intestate (Next-of-Kin etc)
- CGT linked to Date of Death <> CAT linked to Valuation Date
 - Can led to Double Tax on income and capital growth between the dates
 - **Be wary of valuations especially if plan is to sell the asset!**

Q 1) Why are you working? / running a business? / investing?

A 1) **TO MAKE MONEY**

=====

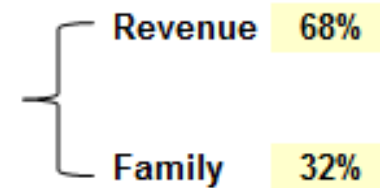
Q 2) Who are you making money for?

A 2) **For your family**

=====

Q 3) **Are you sure?**

<u>Income</u>	<u>Tax 52%</u>	<u>Net</u>	<u>CAT 33%</u>	<u>What is left?</u>
€100,000	(€52,000)	€48,000	(€15,840)	€32,160



SUCCESSION PLANNING - v - ESTATE PLANNING

Succession Planning

All options
(Sale, Gift, Inheritance etc)

CAT/CGT/SD etc

Certainty (tax, circumstances etc)

Plan A?

Estate Planning

Focus on Inheritance

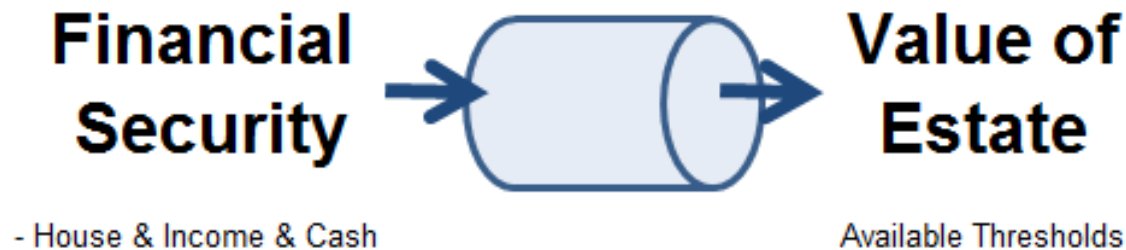
CAT only – no CGT/SD

Uncertainty (things change)

Plan B?

- (Lot to be said for 'certainty' – can 'extra' taxes like CGT/SD be managed?)

Me First!



- Don't let the tail wag the dog
 - Parents must consider their own financial position first
 - Don't be left relying upon children.....or in-laws!
- Balance between own independence and tax mitigation
 - 3 children => Estate worth €1m => House and Cash etc => Space for both
 - 1 Child => Estate worth €335k => House alone might be issue

Passing Wealth:

- **Tax-Planning = Trying to get more than 32% to your family!!**
 - Transfer of ownership
 - Sale - CGT for Vendor? CAT for Beneficiary? SD for Beneficiary?
 - Gift – Deemed CGT? CAT? SD?
 - Inheritance – CAT for Beneficiary? CGT & SD if Family not happy?
 - Re-direct future income / capital growth
 - Future Value Shares / Family Partnerships / Loans etc
 - Focus today is on Inheritances
 - **Will** – Specific & Residual Bequests => Possibility of Choice & Control
 - **No Will** – Succession Act => Potential for Chaos & Problems
- => If No Will – then get one.....and quickly!**

Transfer of ownership 'on a death':

Jointly Held Assets



Automatic – Will irrelevant

Specific Legacies



As per Will

DISCLAIMERS

Residue



As per Will

DISCLAIMERS BUT.....

Intestacy



No Will / Disclaimers

Reliefs & Exemptions

(and other tax-planning tools)



Reliefs & Exemptions:

- Spouses
 - Both Gifts & Inheritances are exempt for CAT
 - (Also exempt for CGT but Base Cost rules different for Gifts and Inheritances so planning option....maybe)
- Small Gift Exemption - First €3,000 per person and per year – **Gifts only**
 - Under-appreciated in practice:
 - Mam & Dad & 10-year old Son
 - Parents invest SGE with abm via 8-year plan with 3% yield
 - Cost Parents €48k, Son gets €54k when 18, Tax Saving €17k+
 - Mam & Dad with married daughter and two grandkids
 - Can transfer €24kpa tax-free
 - €120k wealth moved tax-free every 5 years = tax saving almost €40k every 5 years

Reliefs & Exemptions cont.....

- **T/F of a Dwelling** – tax-free but complicated
 - Gifts almost N/A, inheritances maybe but... must be living there 3 years, stay for 6 months, have no other link to residential property etc
- **Business Relief** – 90% Reduction in value for CAT
 - Valuable but complicated – existing business required
- **Agricultural Relief** – 90% Reduction in value of CAT
 - Valuable but getting complicated – not just for Farmers....but...!
 - Conditional transfer of cash also an option
- **CGT/CAT Off-set** - Allows CGT paid to reduce CAT on same event
 - Can be useful to allow Parent cover Child's CAT without additional gift etc

Reliefs & Exemptions cont.....

- **Favourite Nephew Relief / Favourite Niece Relief**
 - Allows Class A Threshold – worked in business for 5 years and 15/24 hours per week
 - Very common practice in Ireland - Practitioners often forget FNR
- **Foster Child Relief**
 - Allows Class A if Child lived with Disponer for 5 years before turning 18
 - Very common in Rural & City but people are not aware of ‘informal’ Foster Child status
 - Onus of Proof but usually possible as Revenue take practical approach
- **Child to Parent**
 - Can be Class A, but can also be Exempt if Parent to Child ‘taxable’ gift in previous 5 years
 - **Document €6,002 gift every 5 years** – especially if Child has wealth but no family
- **S.72 / S.73 Life Assurance**
 - Insurance Policies designated to pay inheritance or gift tax
 - Fluctuate in usage as value-for-money fluctuates
 - Be wary of timing of Policy v Timing of Inheritance – ‘everything to my spouse’ etc

Potential Tax-Planning Tools:

- **CAT Exemption Thresholds**
 - Include in-laws and grandchildren etc for Specific Legacies
- Mam & Dad have 3 sons, Tom, Dick & Harry
 - Tom married to TW and no children
 - Dick married to DW and they have 3 children
 - Harry not married and has no children
 - Leave Estate to Three Sons Equally v Use Specific Legacies to Split Gross Estate
 - €32,500 to D1 and to D2 and to D3
 - €16,250 to TW and DW
 - €97,500 to Tom
 - €113,750 to Harry
 - Residue between 3 sons
- Still split between three sons but almost €43k less in inheritance tax
- Sometimes Others included on their own merit – Client Preference > Tax Planning

Potential Tax-Planning Tools cont.....:

- **Disclaimers** - Can't force someone to take a bequest
 - Can't partially disclaim – all or nothing
 - Be aware of same when drafting the Will – use of Specific Legacies etc
 - Pure Disclaimer (*I don't want it*) <> No CAT & No CGT
 - Disclaimer for Consideration (*I want this instead*) – No CAT but might be CGT – May require Deed for Family Arrangement
 - Always get legal advice to be certain of impact <> Be wary of Residue disclaimers

- **Deed of Family Arrangement**
 - CGT concept – deemed to be effective from Date of Death so no CGT
 - If values vary, can still generate CAT issues (gift tax)
 - Process and time-limit (2 years) so consider early

Potential Tax-Planning Tools cont.....:

- **Trusts**
 - Tax v Legal v Practical v Family v Commercial
 - Tax-efficiency v Protection
 - Not only way of 'managing access' – e.g. co-ownership
- **Bare Trust / Nominee Trust**
 - Ownership passes immediately = tax payable
 - No real protection – disguise more than delay
- **Discretionary Trust**
 - Delays ownership = delay tax – could be positive or negative
 - 6% DTT and 1% pa but does extra available for investment justify?
- **Fixed Trust**
 - Worse part of both – still a trust but no discretion?
 - Power to accumulate = DTT but none of the discretion?
 - No Power to accumulate – Bare Trust but with extra taxes?
- **Family Partnerships**
 - CGT instead of CAT but timing linked to sale so cash available
 - Delay means more money invested for longer



Practical Considerations (Tax Tools & Tips)



Allow Flexibility:

- House & Farm to Son, residue to daughter
 - Daughter happy re. farm but she lived in house and Son had own place
 - Better to (i) House to Son (ii) Farm to Son (iii) Residue to Daughter
 - Allows Son to disclaim house if he wants
- Business & Property to Son, Residue to Daughter
 - Residue included investment property
 - Change to (i) Business to Son (ii) Unit to Son (iii) House to Daughter (iv) Residue equally between both
 - Allows kids to split properties, if they want
- Specific v Residue – don't be afraid to use Specific bequests

Pensions:

- Passing to Spouse v Children v Others?
- New PRSA regime – Can delay crystallisation until aged 75
 - Fund €1m from Company – Passes to Kids in Will
 - 30% extraction = 70% with family v 32% earlier
 - Tax-free growth in the interim and CT deduction etc etc
- Was always potentially tax efficient but may become valuable way of transferring wealth
 - Spouse neutral v Kids great v Others then not so much

Never too small or too early:

- Fail to Prepare ...etc
 - Family Companies – isolate trade from non-trade, be wary of RR cap
 - Properties into Family Partnership
 - Be wary of rules around foreign assets – two Wills? Succession laws?
 - Consider liquidity – can beneficiary fund the tax or forced to sell?
 - SGE – start now and revisit regularly
- Estate v Financial Security v Available Thresholds
 - Life Interest in House v Right of Residence v exclusive Right of Residence
 - Use SGE to fund loans from children to parents – see example
 - Sale of 50% Joint Ownership and use proceeds to fund SGE – see example
 - Turn off the tap? Don't make gap wider – see example
- Be prepared, be flexible, be proactive, be creative.

Examples:

- **Parents' Estate > Available Thresholds**
 - Two married children with 2 kids each
 - Parents used SGE to gifts €48kpa
 - Kids used this to fund household bills and kids schooling etc
 - Kids used own 'spare funds' to loan parents €40k each every year
 - Parents owed kids €200k when they died - €66k tax saved
- **Mother living with Daughter – house would pass to her**
 - Mother sold 50% to D for €180k so jointly held when she died
 - Mother used SGE and in-law and grandkids' thresholds to gift €180k back
 - Daughter only inherited 50% via Estate – tax saved > €70k as house value rose
- **Both only possible because early exploration etc**
 - Critically, both cases involved original succession plan implemented (tail v dog etc)

Examples cont....

- **Re-directing Wealth**
 - Parents about to purchase new investment property, already have share portfolio
 - Estate already > Available Thresholds
 - Form Family Partnership
 - Parents > 50% votes, Kids 100% Capital in excess of Parents loan to fund
 - Shares sold by Parents, new Purchases also via Family Partnership
 - Property & 30% of shares outside of Estate when Parents died
 - Tax Saved? Income element as well as CAT but CGT later etc
- **As above but...**
 - Parents didn't buy = instead funds put into Company Pension to buy property
 - Tax-free rent and thus faster growth
 - Pre-tax funds so bought two properties instead of one
 - Kids only paid 30% tax on ARF extraction


SUMMARY

(& Questions)



Summary:

- Succession Planning v Estate Planning = Plan A & Plan B
- Can be creative but at least don't miss the easy stuff
- Things change – tax, family, circumstances etc – revisit often
- You decide what you want, rest is about timing and structure
- BE PROACTIVE – otherwise Revenue 68% Family 32%!



This presentation is intended to be informative but issues are condensed in the interest of clarity and brevity which may lead to over-simplification and inaccuracies. The time restrictions should also be considered as these may have lead to errors and omissions.

This format does not facilitate a more comprehensive examination of the issues covered. In addition, many of the comments are based on the author's personal interpretation of the relevant events, statements and documents, and may differ from the interpretation of others and may be inaccurate outside the context of this event.

Please note that this presentation was intended to be a general guide only and further advice should be obtained before taking, or refraining from taking, any action. Neither the speaker nor MK Brazil accept any responsibility for any party acting or refraining from acting on the basis of the information disclosed either orally or in writing during this presentation.

Thank you for your attention.

QUESTIONS?



brendantwohig@mkbrazil.com

Laurengreene@mkbrazil.com

mk>brazil

Tel:051 840800 / Fax: 051 - 874504

E-mail: *brendantwohig@mkbrazil.com*