

## CAT Valuation Date

The valuation date is central to CAT as it determines the date on which the benefit is valued, and the date on which the tax is due. The rules regarding when a valuation date falls are very flexible, as they need to be if they are to take account of every possible event that may arise in the administration of estates, transfer of gifts or appointments from trusts.

The valuation date is dealt with in S 30 CATCA 03 and this section sets out a number of specific provisions followed by a general rule. The following points should be born in mind:

- ◆ There can be more than one valuation date in respect of a single estate.
- ◆ If the beneficiary is already in possession (e.g. joint property) the date of death will be the valuation date.
- ◆ Delivery of an asset, or letting of beneficiary into possession may accelerate the valuation date.

As the valuation date for a gift is the date of gift, and the valuation date for a distribution from a discretionary trust is generally the date on which the distribution is made, this paper focuses mainly on estates. The valuation date often occurs at some point later than the date of death and in many probate cases Revenue accept the date of Grant of Probate as the valuation date. However it is advisable to consider the matter in some detail as soon as possible after the death as earlier valuation dates often arise.

The category which most inheritances fall into is the general category, i.e. the valuation date is the earliest date on which the personal representative was entitled to retain the benefit, or on which he retained the benefit, or on which he delivered the benefit. The issue is how to identify when the personal representative is “*entitled to retain the subject matter of the inheritance for the benefit of the successor....*”

### Retainer

Many of the concepts in CAT follow on from earlier legacy duty legislation. The general rules on establishing the valuation date (s30 CATCA 03) are drawn from the legacy duty rules which are based on the legal concept of retainer, i.e. the time at which a beneficiary is entitled to his benefit.

In Lord Advocate -v- Wotherspoon's Trustees (1930), SLT82 Fleming LJ considered what retainer means, and concluded that retainer denotes the delivery, or payment of a legacy, or something similar in character to delivery or payment.

*“Retainer is something different from the holding or retention of a trust estate by the trustees in order to carry out the trust purposes. It must be a retainer in the right and for the benefit of the legatee - something of an analogous character to actual delivery or payment. It is an essential feature of the retainer that the legatee should be entitled either to demand payment or delivery or at all events should have the beneficial enjoyment of the legacy through the hands of the*

*trustees. An obvious case of retainer is the holding by an executor of a legacy on account of a personal disability on the part of the legatee to give a discharge therefor."*

Retainer may be "*analogous...to actual delivery or payment*" but the point of "retainer" may be different to the actual date of delivery or transfer of an inheritance to a beneficiary. If the benefit can be identified and passed over but is retained pending receipt of tax clearances, the point of retainer will be the point at which the benefit is allocated to the beneficiary, not the later date when the CAT clearance issues and the benefit is distributed.

*Example*

*The personal representative defers distributing to the residuary beneficiary until he receives a CAT clearance certificate. The valuation date will be the date the benefit is allocated, not the date on which the CAT clearance issues, or the date on which the benefit is distributed.*

The corollary is that if the benefit is delivered or paid to a beneficiary prior to the date the benefit is ascertained or the retained, the payment or delivery will create a valuation date.

*Example*

*A residuary beneficiary in a solvent estate is overdrawn and persuades the personal representative to release €10,000 as this is a small fraction of the total benefit (estimated at €400,000 but not ascertained as the pre death tax liability of the deceased has not yet been calculated). The valuation date will be the date the €10,000 is paid.*

### **Section 30 CATCA03 Special Cases**

Section 30 (2) lists some exceptional cases and sets out the valuation dates that apply. In summary these are:-

1. *Donatio mortis causa* (i.e. a gift made in contemplation of death, which is not effective unless and until the death occurs). The valuation date is the date of death when the gift is perfected.

2. An inheritance taken when a disponent who had power to revoke a disposition dies, without revoking it. The valuation date is the date of death when the benefit becomes absolute, as it can no longer be lost by revocation.

3. The valuation date for a gift is the date of gift. This remains the case even if the gift becomes an "inheritance" on the death of the disponent within 2 years of the gift.

### **Section 30 CATCA03 General Rule**

S 30(4) CATCA 03 goes on to provide a general rule, i.e. that the valuation date of a taxable inheritance shall be the earliest of the following dates:

- (a) the earliest date on which a personal representative or trustee or the successor or any other person is entitled to retain the subject matter of the inheritance for

the benefit of the successor or any person in right of the successor or on his behalf, or

- (b) the date on which the subject matter of the inheritance is so retained; or
- (c) the date of delivery, payment or other satisfaction or discharge of the subject matter of the inheritance to the successor for his own benefit or to or for the benefit of any person in right of the successor or on his behalf.

### **On Death**

The valuation date for the benefits needs to be identified as early as possible to ensure a timely payment of tax. When advising a personal representative practitioners should bear in mind that some valuation dates arise immediately on death.

Common instances of situations in which the date of death may be the valuation date are:-

- ◆ Joint property  
(passes on death by operation of law)
- ◆ Specific legacies  
(in a solvent estate a beneficiary may call for them early – note executor's year)
- ◆ Beneficiary in possession  
(if a beneficiary is in possession from the date of death – e.g. rental property where the beneficiary has been collecting rent for the deceased and from the date of death retains the rent as he has been given the rental property under the Will, or devisee of farmland allowed onto the land to farm)
- ◆ Remainders taken on the death of a life tenant  
(again these pass on death by operation of law)

In general where the estate passes on intestacy the valuation date should not arise until the letters of administration are extracted, but it could happen that a person intermeddling with an estate could trigger a valuation date prior to the grant of administration.

### **Payments in the Course of Administration**

In a solvent estate the personal representative might make advance payments from the estate to a beneficiary. Each advance payment is likely to have its own valuation date so there could be several of these valuation dates before the personal representative is finally in a position to retain the balance of residue for the beneficiary.

If property is appropriated in the course of an administration, the date of appropriation will generally be the valuation date of the property involved.

- Specific Legacy:** Bohan on CAT indicates that the Revenue may argue that the valuation date for a specific legacy is the date of death. However his view is that the valuation date for a specific legacy will generally be later.
- Pecuniary Legacy:** As the personal representative has the executor's year to administer the estate the valuation date for a pecuniary legacy will generally not arise until the end of the executor's year, though if the estate is administered quickly and the date of Grant of Probate occurs within the year the valuation date is likely to be the date of Grant.
- Advancements:** A valuation date can arise if a personal representative makes a part payment of a benefit, or a payment on account of a benefit, which is not otherwise being "retained", for the beneficiary. The valuation date will be the date the part payment is made. A personal representative who distributes piecemeal as he receives assets may create a "string" of successive valuation dates.
- Revenue practice is to treat the advancement as a part payment of the whole, so that if a benefit is paid in two parts the CAT is calculated on the entire benefit and apportioned to the part paid and the part retained (rather than two separate calculations being carried out as each part payment is made).

## **Dealings with Residue**

The residue bears all of the debts and liabilities of the estate and it can take some time to bring the administration of the estate to the point where the value of the residue can be ascertained. The valuation date for the residue is generally the date on which the residue is ascertained for all the residuary legatees or the next of kin. This is the date on which all the liabilities have been paid and the assets in the estate have been ascertained and are all identified and accounted for. The date of issue of the Grant of Probate is frequently taken as the valuation date for the residue.

*The Revenue Guidance Notes on S 30 state that*

*For inheritances, the valuation date is, normally, the date of ascertainment of the residue or other benefit and of its retainer for the benefit of the successor.*

It should be noted that a payment on account of the residue will generally be an indicator that the residue can be determined and there is a risk that this will result in the personal representative being in a position to retain the residue, which will trigger the valuation date for the entire residue, not just the portion advanced.

*The Revenue Guidance Notes on S 30 indicate that*

*Where advances are made out of an inheritance, each payment in advance or part payment is treated as being retained on the date of such payment as if it were a separate inheritance. Thus, if a successor is entitled to a residuary bequest and receives shares worth €100,000 on 1 March 2004, cash amounting to €10,000 on 1 June 2004 and the balance on 1 August*

2004, the valuation date will, respectively, be 1 March, 1 June and 1 August for the 3 separate parts of the inheritance.

#### *Example: Advancements*

*A beneficiary receives a pecuniary bequest of €100,000 which will give rise to CAT of €10,000. As he is in need of funds and the estate is solvent he asks for and is given €20,000 as an advance payment of his bequest in January 2008 and the balance is paid in June 2008. Revenue practice is to seek tax of €2,000 (20% of the total tax on 20% of the total benefit) rather than dealing with the first payment of €20,000 and the later payment of €80,000 as two separate benefits. There are two separate valuation dates – January 2008 and June 2008.*

### **Multiple Valuation Dates**

It is possible that an inheritance with a number of elements could have several valuation dates.

#### *Example: Different Valuation Dates*

*John Brady died on 31 May 2007 after a short illness. He was living with his partner Una and their house was in joint names. He left her his car (which Una has been using which John was ill as it is a better car than her own), a bank account holding €50,000 and the residue of his estate. Una was short of cash and the estate was clearly solvent so the personal representative advanced the €50,00 from the bank account in August 2007. The Grant of Probate issued on 2 November 2007. The valuation dates are as follows:-*

<i>Interest in house:</i>	<i>31 May 2007 (date of death - it passes by operation of law on that date)</i>
<i>Bank account:</i>	<i>August 2007 (date of payment)</i>
<i>Car:</i>	<i>31 May 2007 (date of death as Una has been in possession)</i>
<i>Residue:</i>	<i>2 November 2007 (date of Grant)</i>

### **Impact of Litigation**

The valuation date arises because the estate reaches the point when the beneficiary's benefit can be identified and allocated to him. If some event occurs which results in uncertainty on whether the beneficiary will take the benefit, or on how much of the benefit will be available to him then this will displace any existing valuation date, and a new valuation date should be selected.

There can be a number of factors that affect the devolution of the estate and if the level of the estate, or the entitlement to a particular beneficiary's benefit are affected the valuation date will also be affected.

However the fact that there is litigation in the estate will not defer the valuation date for beneficiaries if their interests are not directly affected.

*Example: Litigation*

*John leaves €100,000 to his brother George by Will and leaves the residue of the estate to his partner Kate. John's other brother Sam has spent 10 years working with John in his shop at a low wage and understood that he would be inheriting the shop in return.*

*On John's death Sam makes a claim that there is a testamentary contract under which he is entitled to the shop, and proceedings issue in the High Court. The estate is circa €4m and the shop is circa €1m in value.*

*The outcome of Sam's proceedings should not affect George's legacy, and therefore will not defer George's valuation date. Kate's valuation date should not arise until the litigation is resolved.*

### **Common Actions**

There may be a surviving spouse claim

- Affects the assets passing to other beneficiaries
- May result in appropriation of the family home

There may be a child's claim under S 117 SA 65

- Affects the assets passing to other beneficiaries

There may be a challenge to the validity of the Will (undue influence/incorrect execution/lack of capacity etc)

- Affects the devolution of the entire estate

There may be a dispute about the level of benefit received (legitimate expectation/quantum meruit etc)

- May affect a limited number of benefits

There may be a creditor who emerges in the course of administration

- Affects the residuary beneficiaries (if residue can satisfy claim)

### **Selection of Valuation Date**

The fact that the valuation date is not clear-cut in all cases means that the beneficiary can occasionally select between several dates, one of which may suit better than another from a taxation perspective.

Generally the valuation date will have a serious impact on the level of tax if:-

- (i) the asset is rising in value

The best example of this is probably the rise in value of residential property up to 2007. If the deceased died in 2004, and the grant of probate was extracted in 2008 the value of the property in 2004 may be much lower than the value in 2008. If 2004 is selected as the valuation date then the CAT will be on a lower value but as the CAT would have been due within 4 months the tax will be late so interest will be accruing. This should be quantified.

If 2008 is selected as a valuation date there will be no interest if the return is filed and tax paid on time but the CAT will be payable on a higher value. Again the tax should be quantified.

- (ii) the asset is volatile in value

The best example of this is probably quoted shares. If the deceased died in January 2008, and the grant of probate is extracted by end April 2008 the value of any shares in the estate may have changed substantially.

### **Revenue's Role**

Although CAT is based on a self assessment system and in most cases the beneficiary selects the valuation date for inclusion on the return the legislation provides that Revenue can determine the valuation date.

Section 30 (6) gives power to the Revenue to determine the valuation date in respect of the whole or part of any inheritance. The taxpayer has the right to appeal against this determination (s30 (9) CATCA03).

In cases of doubt under s30 (8) the Revenue may agree with the taxpayer on a particular valuation date to be applied to the estate. This might arise in a situation where many advancements had been made, in order to avoid a multiplicity of valuation dates.

### **Relevance of Valuation Date**

The valuation date is relevant for many reasons:-

1. CAT is due on the valuation date.
2. The value is to be established as at the valuation date.
3. Installments are due for payment by reference to the valuation date.
4. Interest running from the valuation date if CAT is not paid within 4 months.
5. The farmer test has to be carried out on the valuation date.
6. A farmer has to be resident in the 3 years following the year in which the valuation date falls.
7. Property must qualify as agricultural property on the date of the benefit and on the valuation date to qualify for agricultural relief.

8. Tax is a charge on the property of which the gift or inheritance consisted at the valuation date. If a property is sold before the valuation date arises the charge does not attach to the property.
9. The question of whether property is relevant business property is determined on the valuation date (e.g. one test is shares giving 25% powers of voting on the valuation date).

### **Sale Condition on a Certificate of Discharge**

The valuation date sets the date on which the property must be valued. However even if the Revenue accept the valuation date and the value submitted they reserve the right to reconsider in the event of a sale within 3 years.

The CA11 and CA11 Dev each contains the same condition on paragraph 1 at the back.

*“In the event of a sale or compulsory acquisition of any portion of the property within 3 years from the date of the gift/inheritance, the taxable value of the gift/inheritance may be subject to readjustment”.*

In other words even if Revenue accept the valuation provided in the IT38 and issue a CA11 they reserve the right to revisit if a sale within the following 3 years is at a price that indicates that the value in the return may have been an undervalue.

### **Tax Planning & Valuation dates**

Any estate or tax planning options that arise in respect of the valuation date should be considered. For example:

- ◆ If the donee can arrange to be a farmer on the valuation date agricultural relief may be available. Assets may be transferred before the death.
- ◆ If the estate has assets which have volatile values (e.g. shares) a valuation date may be selected at a point when the share price is low (reducing the value which is subject to CAT).
- ◆ If assets include foreign property consider the impact of the exchange rate on the value, and whether a valuation date can be selected which gives a lower value for the client (reducing CAT).

### **CGT for Estates**

Generally CGT does not arise where assets pass on a death. S.573 provides that the assets of which a deceased person was competent to dispose shall not be deemed to be disposed of by him on his death regardless of whether they were the subject of a testamentary disposition.

The personal representatives are deemed to have acquired the relevant assets of the deceased at market value at the date of death. As they are not individuals the personal

representatives cannot claim the annual allowance of €1,270 and they cannot claim personal reliefs.

If the personal representatives appoint an asset to a beneficiary who is a legatee under the Will the disposal does not give rise to a chargeable gain, and the legatee is deemed to have acquired the asset at the time of death for its market value at that date.

Under S.568 the personal representatives are liable to CGT in respect of disposals made by them, if the asset disposed of is a capital asset and has risen in value since the date of death.

The Revenue Manual indicates that the Revenue will regard a residuary legatee as becoming absolutely entitled to property as against the personal representatives when the net residue has been ascertained, and may regard a sale after that date as a sale by the beneficiary (effected by the personal representative as bare trustee) rather than a sale by the personal representative in the course of administration.

The CGT Manual (para 19.3.9) provides that:

*"It may, however, happen that particular property is appropriated during the course of the administration by the personal representatives assenting to particular assets being vested in a residuary legatee or residuary legatees jointly. If the personal representatives then dispose of assets which have been so appropriated, e.g., because a legatee prefers to receive cash rather than an asset, they will do so as "bare trustees" and not as personal representatives.*

*The date of ascertainment of the net residue is essentially a question of fact, but claims that disposals of assets have been made by personal representatives not in their capacity as such but as "bare trustees" for the legatees should be supported by evidence to show that the assets were appropriated to a legatee .... prior to the disposal."*

Some gains may be quite inconspicuous; for example the disposal of non Irish currency is a disposal which may give rise to a CGT charge. If an estate contains a sterling cash fund (such as a bank account in the UK) the personal representative may make a gain for Irish CGT purposes when he converts the fund to euro.

CGT on a non Irish asset is calculated by converting the sale proceeds and base cost using the conversion rate that applied at the date of acquisition and disposal, not by determining the gain and converting that to euro.

It follows that a swing in exchange rates between the date of death and the date of exchange of the cash can result in a CGT liability which is out of proportion to the increase in the actual value of the fund over the same time.

*Example: CGT on Conversion of Currency*

*Sean emigrated to the UK when he was in his 20s but never settled there and when he retired at the age of 60 in January 2003 he returned to take*

*up residence in Ireland. In February 2004 he died and at the date of his death his estate consisted of:*

- ◆ *a bank account in Ireland holding €20,000, and*
- ◆ *a UK bank account holding STG£50,000*

*In July 2004 his personal representative transferred the funds from the UK bank account to the Executors' account, at which date they converted into €83,333 (exchange rate of €1: Stg£0.6).*

*The sole beneficiary of the estate, a nephew called Tom, inherited the entire estate. He wanted to keep the house and the personal representative appointed it to him by was of Deed of Assent and paid out the cash to him.*

- ◆ *a house in Ireland valued at €400,000,*

*No CGT arises in respect of the house on the basis that it was transferred to a legatee entitled to it under the Will. However CGT will arise in respect of the conversion of the sterling currency to euro. If the sterling in the account converted to €79,465 (exchange rate of €1: Stg£0.63) the conversion would result in a gain of €3,868.*

### **Estate Assets with Rising Value – Double Tax**

S.573 TCA 1997 provides that if personal representatives dispose of an asset in the course of administration of the estate they will be liable to CGT on the rise in value since the date of death. The personal representatives may contract to sell before a Grant issues and may complete the sale once the Grant is available.

A beneficiary pays CAT based on the value of the property at the valuation date (say the date of Grant of Probate).

It follows that if the asset has risen in value from the date of death to the date of Grant the rise in value will be subject to CAT and to CGT.

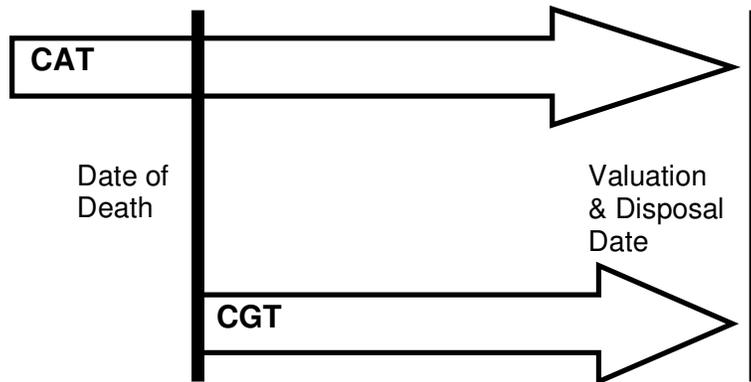
#### *Example: CAT & CGT on same Rise in Value*

*When Paul died in July 2007 the residue of his estate was an apartment in London (date of death value €500,000). He left half the residue to his sister Anne (whose class (b) threshold was absorbed by an earlier inheritance from an uncle).*

*The personal representatives sold the property for €600,000 in the course of administration and paid Irish CGT of €20,000. Anne received €570,000 (net of costs of €10,000 and CGT) and will pay CAT on a benefit of €570,000.*

*The rise in value since the date of death has been subject to CGT and CAT.*

## Double Tax: CAT & CGT on Same Value



### Valuing Assets at Date of Death

The date of death value can be key if there will be a sale in the course of administration. As the CAT will arise based on the valuation date value it will not be affected by the date of death value. However the CGT is paid on the rise in value from the date of death.

### CGT/CAT Setoff

S.104 CATCA 2003 provides that where capital gains tax (“CGT”) and capital acquisition tax (“CAT”) arises on the same event, CGT paid can be credited against the CAT due. The main things to note is that the taxes must arise on the same event.

#### *Example: CAT-CGT Setoff*

*If Brian makes a gift to his son Jim of his AIB shares any CGT that Brian will pay on the disposal can be offset against the CAT that Jim will pay on the gift, as the transfer of the shares constitutes both the disposal and the gift for CAT purposes. The taxes arise on the same event.*

The setoff is only of use to the extent that the beneficiary has a CAT liability.

#### *Example: CAT-CGT Setoff Available – no benefit*

*In the example above if Brian paid €200,000 for the shares and they are worth €400,000 at the date of disposal his CGT liability will be in the region of €40,000 (ignoring costs and indexation for simplicity). However if Jim has a full Class (a) tax free threshold available, the gift will not result in a CAT cost to Jim, so there would be no CAT to set the CGT against.*

There can be a mismatch on payment dates. This is on the basis that the CAT falls due for payment within four months of the valuation date (normally the date of gift). However CGT will fall due for payment one month after the end of the relevant period. In the example above if the gift of the house occurred on 2 January 2008 the CAT would be payable on or before May 2008, but the CGT would not fall due for payment until 31

October 2008 (one month after the end of the initial period for 2008). Therefore at the time that the setoff is being claimed the CGT would not have been paid yet.

In general the Revenue Commissioners will, where a setoff is being claimed, allow the beneficiary of the gift to include the setoff in his or her CAT computation, notwithstanding that the CGT has not been paid. However the Revenue will not issue an absolute certificate of clearance from CAT in respect of the gift until after the CGT liability is discharged. As the legislation requires payment of the CGT it would, strictly speaking, be open to the Revenue Commissioners to seek to have the CGT paid early, or to defer the CAT credit until CGT is paid.

A clawback of the setoff will occur when the beneficiary does not retain the asset gifted but disposes of it within 2 years. The general CAT Clearance Certificate will be issued in a qualified form (i.e. there will be a box ticked on the back to indicate that it is not absolute) to reflect the fact that the relief may be clawed back.

A CAT / CGT setoff is rarely available in the context of an estate. This is on the basis that the inheritance occurs on the date of death of the deceased, but the death is not generally a disposal for CGT purposes. Typically what happens in the context of an estate is that the personal representatives take the assets and sell in the course of administration. The proceeds of sale are then passed to the beneficiary. There is a capital gain, which reduces the value of the inheritance. However the capital gain occurs on the sale, where as the CAT occurs on the inheritance. As they are two separate events the setoff is not available.

*Example: CAT CGT Setoff – different events*

*In an Example above Paul died in July 2007 and left the residue of his estate to Anne. The personal representatives will pay CGT on the sale of the property, and Anne will pay CAT on her inheritance of the residue. The taxes arise on two different event (the inheritance and the sale) so no offset will be available.*