RELIEFS FROM TAXES FOR FAMILY BUSINESSES IN IRELAND

The main taxes applying on the transfer of family businesses by way of gift or inheritance in Ireland are as follows:

1. **Capital Acquisitions Tax (CAT)**

   This is the tax on the acquisition of capital by way of gift or inheritance.

2. **Capital Gains Tax (CGT)**

   This is the tax chargeable on a capital gain accruing on an asset when same is disposed of by a Disponer. The obligation to discharge the tax is on the Disponer. Capital gains tax is not payable on an inheritance.

3. **Stamp Duty**

   Stamp duty is the tax on instruments on the transfer of property by way of gift or inheritance, and also applies to the transfer of shares.

**Capital Acquisitions Tax (CAT) rates as of 06/12/2012**

The current rate of tax is 33% above lifetime thresholds, which are as follows:

- Parent to child: €225,000
- Other close relatives: €30,150
- Strangers & In-Laws: €15,075

The subdivision of a gift between children and grandchildren can sometimes assist in mitigating the tax liability, but care should be had that tax planning does not risk damaging business assets.
Business Relief

Business relief has the effect of discounting the value of the property passing by way of gift/inheritance, where the property comprises of qualifying assets for business purposes.

The current relief available is 90% of the business value on the transfer of qualifying business assets.

It applies to business assets as follows:

(a) Property consisting of a business or an interest in a business.
(b) Shares in a company.
(c) Lands or building used by the company even if it is controlled by the Disponer in their own name.
(d) Quoted Shares.

The business must be a trading business, solely owned by the Disponer or the Disponer’s spouse for at least five years prior to the transfer, or in the case of inheritance for at least two years where the transfer is taken on death.

Assets not used wholly or mainly for the business concerned are ignored in valuing the relevant business property.

If for example there was a substantial amount of cash in the business this would be excluded, and the normal rates of tax would apply to the cash element of the assets.

A business asset must:

1. Be retained for a period of six years commencing on the date of gift or inheritance.
2. In the event of the asset being disposed of, it may be replaced by other similar business assets provided they are of more or at least equal value.

If they are of a lesser value then the claw back is apportioned.
Agriculture Relief

Where the donee or successor is deemed to be a farmer for the purposes of the Act, the market value of all agriculture property is reduced by 90%.

For the purposes of the Act a farmer means an individual in respect of whom not less than 80% of his or her assets after taking the gift or inheritance are deemed to be agricultural assets. This does give the opportunity for some tax planning. There are rules about retaining the property for a period of ten years (with some relief after six years).

Favourite niece / nephew

A niece or a nephew or child of a civil partner of a brother or sister of a Disponer who has worked substantially on a full time basis for a period of five years ending on the date of gift or inheritance carrying on and assisting in the trade business or profession may be deemed to be a child for the purposes of the Act.

There are certain conditions set out, but this does also provide for them to step into the shoes as if they were a child.

Once the value of the asset has been discounted by 90%, you then apply the threshold, in the case of a child of €225,000 (two hundred and twenty five thousand euros), which is also tax free.

Example:

If you had a business valued at €2.5 million which fully qualified for the relief, you can apply the discount of 90% (€2,250,000) leaving €250,000 chargeable to CAT. After applying the Group A threshold of €225,000 CAT at 33% is due on €25,000 (€250,000 value minus €225,000 group a threshold) resulting in €8,250 of tax being payable.
Capital Gains Tax (CGT)

Capital gains tax is the tax chargeable on the capital gain made on an asset appreciating in value. Disposal for tax purposes occurs when there is a change of ownership, even though there may be no capital sum derived from that change of ownership i.e. a gift.

The current rate of capital gains tax is 33%.

Gifts of chargeable assets are deemed to be disposed of at their market value.

Where capital gains tax is payable by reference to an event which gives rise to a charge to capital acquisitions tax, then the capital gains tax paid is available for a credit against the capital acquisitions tax liability. The property must be retained for two years, as otherwise there will be a claw back of this relief.

This ensures that where a Disponer has to pay capital gains tax as a result of the disposal, and the same event i.e., the gift or inheritance gives rise to a charge to capital acquisitions tax then the CGT is fully allowable against the CAT chargeable.

This ensures there is only one charge to tax.

Inheritance

Death is not an occasion where a disposal occurs. A person becoming entitled to an asset by reason of death is treated for capital gains tax purposes of having acquired the asset on the date of death at its market value on that date. A disposal does not occur on death.

This means the Estate is not liable to capital gains tax.
**Retirement Relief**

This relief is available to mitigate the tax liability on the disposal of a family business.

Retirement relief is available on the transfer of a qualifying business asset where the gain is disregarded where:

- Disposal is for less than €750,000.00 (seven hundred and fifty thousand euros), if the individual is between 55 and 65, €500,000 if the individual is 66 or older, or
- the disposal is to children where there is a €3m limit on the consideration involved.

To qualify for the relief:

1. The individual must have owned the assets for a minimum period of ten years on the date of the disposal.
2. Where there are shares they must have been working as a director of the company for a period of not less than ten years and as a full time director for at least not less than five years.

**Disposal of Business or Farms or Shares in a Family Company**

Where the disposal is of shares in a family company you can also claim relief in respect of lands, buildings, machinery and plant which are owned by the individual for at least ten years, provided that:

(i) The assets were used by the company throughout the tax payer’s period of ownership.
(ii) The asset disposed of at the same time to the same person as the shares in the family business.

This also applies to farmers.

**Disposal within the Family of Business or Farms or Shares in a Family Company**

Up to 1st day of January 2014 these are fully exempt from capital gains tax irrespective of the consideration. On or after 1st day of January 2014 provided an individual has attained 55 years of age on the disposal of their assets as set out above then they will be fully exempt from Capital Gains Tax.
The reliefs outlined above will apply but only in respect of “qualifying business assets”. Significant investment or cash assets in a family business or company can reduce the available relief.

Where they are over 65 years of age and the consideration exceeds €3m the Capital Gains Tax if chargeable will arise on market value of the assets exceeding €3m.

If the assets acquired are disposed of within six years of acquisition by the child then the capital gains tax that would have been payable but for the exemption, becomes payable as well as the capital gains tax that would be due by the child on the disposal.

This applies to a child, or a niece or nephew who has worked in the business substantially on a full time basis for a period of five years ending with the disposal.

Foster children now also qualify within this definition.

**Stamp Duty**

Stamp duty is charged on instruments on the transfer of an interest in property to a third party.

Stamp duty is charged in the case of gifts on the value of the assets.

Where commercial property is transferred between related persons and the instrument contains a certificate setting out their relationship, the duty payable thereunder is restricted to 50% of the full duty until 31 December 2014. After that the full tax will be payable.

This applies to a lineal descendant, parent, grandparent, step-parent, etc.

Where property is transferred by the personal representative of an Estate, and is transferred in accordance with the terms of the Will, no stamp duty is payable.

This is a brief summary of the reliefs that are available under the Irish legislation to assist/benefit any businesses on their transfer.

Updated 19th August 2014 with thanks to Aisling Donohue, O’Boyle & Co Accountants, Longford [http://www.oboyleandco.ie](http://www.oboyleandco.ie)