OHT Guide - CGT/CAT Set Off S. 104 CATCA 2003

Where a disponer transfers an asset to a beneficiary and capital gains tax (CGT) is paid by the disponer on the disposal of the asset, S. 104 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) allows the CGT paid to be offset as a credit against any capital acquisitions tax (CAT) payable by the beneficiary, where the CAT arises on the same event.

There are a number of provisions in the Taxes Consolidation Act 1997 (TCA 97) which deem a payment of tax to be CGT for the purposes of S. 104 CATCA 2003, so that the tax can be set against CAT payable by the beneficiary on a transfer of an asset. The following tax payments can be treated as CGT, in order to credit them against CAT:-

- Relevant fund tax payable on an Irish life assurance policy, which arises on the death of a person (S. 730GB TCA 97)
- Tax payable on the disposal of foreign life policies issued by foreign life assurance companies carrying on a business in a Member State of the European Communities, a State which is an EEA State, or a State which is a member of the OECD and has a double taxation agreement with Ireland (S. 730K (5) TCA 97)
- Tax payable on Irish investment undertakings as a result of the death of a person (S. 739G (5) TCA 97)
- Income tax payable on the disposal of an interest in a good offshore fund (S. 747E (5) TCA 97)

Some points to consider in relation to the credit available:-

- The two taxes must arise on the same event. If a disponer settles assets in a discretionary trust then the CAT would not arise until the assets are appointed out of the trust, so any of the tax payable by the disponer when the assets are settled into the trust would not be available as a credit.
- If the beneficiary disposes of the asset within two years of acquiring the asset, then the credit would be withdrawn (this can lead to practical difficulties if some of the assets are sold to fund the tax – e.g. units in an investment undertaking).

Taxes Equivalent to CGT

• S. 730 GB TCA 97	Irish Life assurance Products
• S. 730 K (5)	Life assurance product in the EU, EEA or an OED treaty partner
• S. 739G (5) TCA 97	Irish investment undertakings
• S. 747E (5) TCA 97	Good offshore fund

Any inheritance planning should take account of credits there may be available for CGT and equivalent taxes and match them against a CAT liability where possible.

For example, if an individual was to leave units in a good offshore fund to a spouse in his Will, income tax would be chargeable on the capital value of the fund, and as no CAT arises between spouses the credit would be wasted.

If the individual was also leaving assets to a child, and the child had a CAT liability it would generally be more tax efficient if the units in the offshore fund are left to the child who can utilise the credit.

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