OHT Guide
CGT for Estates in a Rising Property Market

The Property Market

The CSO Residential Price Index August 2021 indicates that:-

"*Residential property prices ..increased by 10.9% nationally in the year to August. This compares to an increase of 8.5% in the year to July and a decrease of 0.9% in the twelve months to August 2020. In Dublin, residential property prices saw an increase of 10.2% in the year to August, while property prices outside Dublin were 11.5% higher.*"

Some commentators feel that there is a disparity between supply and demand in the property market which is driving a price increase. A lack of comparative sales can be problematic for auctioneers who are providing estimates of the value of properties.

CGT For Estates

Any rise in value before the death of a property owner is not taxable as the assets will be "rebased" for CGT on a death. However if an executor sells property in the course of administration, a CGT liability will occur if the value of the property rises after the date of death. The starting point for Estate CGT is the date of death value (included in the online Form SA2) as this value is the base cost for CGT purposes.

Charge to Both CAT & CGT

If there is a rise in value between the date of death and the valuation date for CAT, this rise in value will be subject to both CAT and CGT (an effective rate of 66%). Revenue have confirmed that both taxes are chargeable in such a case and there is no set-off available.

Care should be taken to ensure that the rise in value is limited to the genuine rise in value over that period and not an inflated rise in value on the basis of a low value in the Form SA2.

Example: A property is valued on the date of death between €800,000 and €1,000,000. The property sells for €1,200,000 just after the Grant issues. The sales price is used as the valuation on the valuation date for CAT, which is the date of Grant as the property forms part of the residue of the estate.

If the low end of the valuation range is used, then the CGT payable would be based on a gain of €400,000 and this rise in value is subject to both CAT & CGT.

If the higher value is used the CGT would be based on a gain of €200,000. The taxable value for CAT would be €1,200,000 so a "double charge" to CAT & CGT arises on the increase in value of €200,000. This is due to a genuine movement in the property market between the date of death and the sale.

Property Valuation

In previous years there may have been a tendency to include a valuation at the lower end of the range of a property's value for probate purposes to limit the CAT payable by beneficiaries. However, given the increase in property prices such conservative valuations are resulting in significant CGT liabilities for the Estate.

If a sale of property is likely to occur quite quickly following a death then the executors could consider delaying the filing of the Form SA2 until a sale price has been agreed so that an accurate valuation of the property at the date of death can be ascertained.

It may be clear following the sale that the date of death value was low. However, Revenue are generally unwilling to accept a Corrective Affidavit with a more realistic date of death valuation unless it can be shown that the original valuation was manifestly wrong, which can prove difficult.

Conclusion

Given the CGT rate of 33% and the difficulty in filing a Corrective Affidavit to adjust a property value where there are CGT consequences, serious consideration should be given to date of death valuations for properties so as to not end up paying more tax than is necessary.

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