



Finance Act 2010 CAT Changes The Good, the Bad and the Ugly

Finance Act 2010

The Finance Act 2010 contained major CAT changes, which were intended to simplify and streamline Revenue's administration of CAT. The main changes are:-

1. A revised process for applying for grants.
2. Removal of secondary liability (in most cases).
3. Abolition of the 12 year charge on property.
4. New rules for estates involving non-residents.
5. A new 31 October pay and file date for CAT.
6. e-Filing will be mandatory for relief cases.
7. A new surcharge for late filing of returns.

New Process for Applying for Grant

Pre FA10 Revenue certified the Inland Revenue Affidavit ("IRA") before papers were sent to the Probate Office. From mid June 2010 the revised IRA form will be sworn in duplicate, and submitted directly to the Probate Office, if the deceased died on or after **5 December 2001**. The old procedures remains for earlier deaths.

Secondary Accountability

Pre FA10 the beneficiary was primarily liable for CAT and donors of gifts, trustees, personal representatives and agents (including the estate's solicitors) were secondarily liable. An agent's secondary liability had to be triggered by a Revenue notice

and Section 45 Notices were routinely issued to probate solicitors when Revenue returned the certified IRA.

A beneficiary was entitled to apply for a CAT clearance (form CA11) and a person with personal secondary liability (personal representative or solicitor) could apply for personal clearance (form CA44). The FA10 abolished most instances of secondary accountability for CAT, reducing the need for clearance certificates.

Post FA10 the main person liable to CAT is the beneficiary. A personal representative of a deceased donee, and the transferee under section 32(2) CATCA03, may also be liable.

The removal of secondary liability is retrospective, so secondary liability only remains in two cases:-

1. where Revenue "*instituted proceedings to recover..*" CAT before the passing of the Finance Act 2010, and
2. non resident estates (see below).

Revenue have indicated in FAQs that "*there are no active cases where proceedings were issued*".

12 Year Charge on Property

Pre FA10 CAT was a charge on property for 12 years. The FA10 abolished the charge retrospectively, removing the requirement for clearance certificates. Post FA10 there will only be a charge if Revenue instituted proceedings to recover CAT before the FA10 was passed.

Non Resident Estates

Before the passing of FA10 a

personal representative was secondarily liable for CAT, but this liability was limited to assets and related income which the personal representative was beneficially entitled to, which he has received, or which he would have received but for neglect or default.

A solicitor-agent who advised the personal representative was only liable to the extent of the property which in his possession, after service of notice. However the routine service of S. 45 Notices on estate's solicitors when the IRA was returned certified meant that in most cases solicitors acting for estates were secondarily liable once the Revenue returned the IRA.

FA10 introduces a new S. 45AA CATCA03 which provides that:-

1. an Irish personal representative is automatically the agent of non-resident beneficiaries, and
2. a practicing solicitor ("*the solicitor referred to in S.48(10)*") is required to take out a grant if there is no Irish resident personal representative, and may be secondarily liable for non-resident beneficiaries.

The agent's liability for non-resident beneficiaries' CAT is capped to the value of assets passing to non-residents on the death that the agent has control of, or would have control of, but for own neglect or default. The legislation changes a "*receipt/possession*" test to a wider "*control*" test.

The Committee Stage freed a solicitor-agent acting in good faith from secondary liability if he was incorrectly advised by a non-resident beneficiary that there were no prior benefits.

S. 45AA(1) (a) refers to assets passing by Will, intestacy, under the Succession Act 1965 or otherwise passing on the death. This is wide and would include assets passing by operation of law such as joint tenancy property. However the control test presumably takes assets such as joint property passing by survivorship out of the scope of the agent's secondary liability.

The Irish resident agent can deduct the CAT from the estate and has a power, "*whether the property is or is not vested in that person, to raise the... tax and any expenses.... by the sale mortgage or a terminable charge..*". This mirrors the existing power of sale under S.45.

It is difficult to see how this power of sale will operate in practice; as complications will inevitably arise if the donee is one of several owners taking joint title, or if the property is a family home.

Pay & File

Pre FA10 CAT was paid and the IT38 Return was filed within 4 months of the valuation date.

The Finance Bill brings the CAT pay and file regime into line with income tax. The new rules will apply from a date to be specified by order of the Revenue Commissioners.

If the valuation date is between 1 January and 31 August, CAT is due by 31 October in that year.

If the valuation date is between 1 September and 31 December the due date is the following 31 October.

The regime does not affect on the existing valuation date rules (S. 30 CATCA03).

In some cases the new rules will give additional time for paying CAT. For example if the valuation date is 1 September the beneficiary has 14 months to pay.

However a joint tenant who inherits

by survivorship on 30 August only has 2 months to file and pay. In some cases a beneficiary may not have received legal advice before this deadline. In many cases a joint tenant will not be clear on the details of his title, and the title deeds will need to be taken up and checked.

Once the Grant issues the Probate Office will notify Revenue who will request a return from the beneficiaries. If the valuation date has not yet arisen the beneficiary will be expected send back the return, noting that a return is not yet due.

A paper return may be filed if the beneficiary has no reliefs or exemptions except small gifts relief. Where a relief or exemption is claimed the return must be filed electronically via ROS. However it should be noted that the extended ROS filing date (c. 2 weeks after 31 October) will apply for CAT, but this is generally only available if taxpayers **both pay and file** online.

"Reminder" questions will be added to the income tax and CGT return forms, which are also due for filing on 31 October each year.

Returns

Many solicitors have registered with ROS for e-Stamping, either as agents (if they have a Tax Agent/TAIN number) or directly in order to use ROS for eStamping. The new CAT forms will be available on either form of ROS certificate, with minor functionality differences.

New Surcharge

Currently there is a surcharge for undervaluation, but not for late filing of a CAT return. Revenue are introducing a new surcharge which will be 5% of tax (capped at €12,695) where the return less than two months late, and 10% (maximum €63,485) for later returns.

The Good

There is no need to certify an IRA before applying for a Grant and solicitors and trustees will not have automatic secondary liability for CAT

In many cases there will no need for CAT Clearance Certificates and in some cases there will be an extended time for paying CAT (as long as 14 months).

The Bad

Solicitors acting as agents in non-resident cases will have a very wide CAT exposure

Some cases will have a very short timeline for paying CAT (as short as 2 months)

The Ugly

The extent of a solicitor-agent's CAT liability may be affected by the value of non-Irish assets, and solicitors will need to rely on information provided by clients, with very little opportunity to cross-check accuracy.

A joint tenant can have a "date of death" valuation date, with a pay & file deadline arising shortly afterwards (as little as 2 months), so CAT may fall due shortly after the death, before a beneficiary has confirmed the title, or received advice on CAT. To impose interest and a 10% surcharge is inequitable in these circumstances.



Caveat: This note is general in nature and should not be relied on in specific cases. OHT recommends obtaining formal tax advice before taking any steps with tax implications.

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