



The New CAT Regime: One Year On – Compliance Update

Finola O'Hanlon *O'Hanlon Tax Ltd*

Introduction

FA 2010 restructured the capital acquisitions tax (CAT) legislation to simplify the administration of CAT and bring it more into line with other taxes such as income tax and capital gains tax. The new regime introduced a "CAT year" running from 1 September to 31 August, with a single pay and file deadline (31 October following the CAT year in which the valuation date falls). FA 2011 went on to accelerate the CAT pay and file deadline to 30 September each year.

There were many dimensions to the Revenue CAT Project in that new legislation had to be drafted, forms had to be redesigned, the Probate Office and Revenue systems had to be aligned, the CAT dimension of ROS had to be expanded, and CAT then had to be integrated into the REAP selection for audit programme. Most of the new CAT provisions came into effect when a CAT Order (SI 282

of 2010) was passed on 14 June 2010, and this article reviews the operation of the new regime one year on, as taxpayers and their advisers prepare for the second CAT pay and file deadline.

The "Date of Death Trap"

FA 2010 set an annual pay and file date for CAT that is very close to the end of the CAT year. In 2010 the gap between the valuation date and the payment date could be as short as two months, and FA 2011 reduced this to a possible gap of only one month.

In some ways CAT is the tax that is least suitable for this kind of short payment timeline, as many CAT cases involve inheritances on death and a certain percentage of those deaths will have been unexpected. Families who have recently suffered a bereavement may not be focused on tax filing deadlines, and if a tax trigger such

as a valuation date that may not be obvious is added to the mix, it would be very easy for beneficiaries to miss a CAT filing deadline.

The trigger for making a CAT payment is the valuation date, and in many CAT cases the valuation date will be the date that the grant issues, which is a very visible “tax trigger”. However, in certain cases the valuation date is set by the date of death, and beneficiaries may not even be aware that there is a CAT liability for some time after the death. The classic examples of “date of death” valuation dates are cases where assets held jointly pass by survivorship or property passes to a beneficiary who is already in occupation. The CAT will be triggered by the donor’s death and may fall due before the beneficiary even realises that there is a tax liability and before any advice can be taken.

For example, if a testator dies on 31 August 2011 leaving an investment property held jointly with his brother, the brother’s valuation date will be 31 August 2011, and his CAT will be due by 30 September 2011. In the normal course of events the family solicitor or tax adviser will be contacted only a month or so after the death. By the time that the beneficiary becomes aware of the inheritance, he may already be late in filing and have an exposure to interest and surcharge.

CAT Surcharge

A new s53A was inserted in CATCA 2003 to provide for a surcharge on the late payment of tax: 5% (maximum of €12,695) where the tax return is delivered within two months of the filing date and 10% (maximum of €63,485) where the tax return is delivered later. FA 2010 s147 provided that this section applied from the passing of FA 2010 on 3 April 2010, but in practice Revenue treats the surcharge as applying from the date of passing of the CAT Order (14 June 2010).

Revenue indicated, during the 2010 “Road-show” that it ran to familiarise practitioners with the new CAT regime, that surcharges would not be collected by Revenue for valuation dates falling before 14 June 2010 but that ROS might automatically apply surcharges to some returns relating to valuation dates arising before that date,

which Revenue would remove on application to the beneficiary’s District.

Revenue issues a Notice of Acknowledgment in CAT cases rather than a Notice of Assessment. However, if Revenue disagrees with the taxpayer’s self-assessment or if a surcharge arises, a Notice of Amended Assessment will follow shortly afterwards.

Remnants of the “Four-Month” Rule

There are some legislative provisions in place that refer to the “old” CAT four-month deadline and were not adjusted to take account of the movement to an annual CAT deadline.

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CATCA 2003 s57 provides for repayments of CAT, and the period during which a refund can be claimed is four years from the valuation date or the date of payment of the tax “where the tax has been paid within four months after the valuation date”. This section would originally have had the effect of extending the “window period” for a refund claim where the CAT was paid on time. The four-month period has not been adjusted to refer to the new annual payment date.

TCA 1997 s176 extends CGT treatment to the buy-back of shares where the sale proceeds will be used to fund an inheritance tax liability to avoid undue hardship for the beneficiaries. To qualify, the CAT must be paid within four months of the valuation date (s176(1)(b) TCA 1997). Again, this provision would originally have given relief where CAT was paid by the due date, but the legislation has not been amended to take account of the new CAT payment deadline.

In practice Revenue is willing to read both sections as referring to a payment of CAT by the due date, but pending amendment of the legislation, practitioners may wish to confirm formally the position with Revenue in individual cases.

ROS Payment Options for Tax Agents

For CAT, e-filing is mandatory unless the benefit is an unconditional absolute benefit taken from one disponent and no relief or

exemption is being claimed (apart from a routine claim for small-gift exemption).

There are two forms of ROS certificates that can issue to advisers, an Agent Certificate (a TAIN certificate), which was originally developed for filing general taxes (income tax, corporation tax etc.) and a Business Certificate, which was developed when stamp duty was put on an e-filing basis. The two certificates have different payment parameters.

According to Revenue's website, if a practitioner uses a ROS Agent Certificate to file the return, a CAT payment can only be made by Laser card or cheque. Ulster Bank and Permanent TSB have replaced customer Laser cards with Visa debit cards, and these will be accepted by the ROS system, but a standard Visa credit card cannot be used.

The Business Certificate was originally geared toward solicitors paying stamp duty via a single client account and allows for the setting up of a ROS Debit Instruction (RDI) with the agent nominating a bank account from which ROS will automatically debit the online payments. Because the system is geared to a single client account, the RDI is attached to the agent rather than the client, and a separate RDI cannot be set up for each return filed. Once set up, the RDI cannot be changed within 24 hours. After that, the RDI can be changed, but a ROS payment generally takes two to three days to clear, and the RDI should not be adjusted in this time. The payment will be taken from the account to which the RDI is linked at the date of payment, not at the date on which the return was filed, so if the RDI is adjusted in the interim, the payment will come from the wrong account. In practice, multiple payments cannot be made over a short time-span, which may create issues where the agent is acting for several clients close to the ROS filing deadline.

The Institute has made representations to Revenue seeking a more "user-friendly" facility for paying CAT, in particular as many agents do not operate client accounts. Following Institute representations earlier this year regarding the payment of stamp duty, Revenue indicated that a possible upgrade would be made to ROS to facilitate payment. As an interim measure, payment by electronic funds transfer (EFT) would be accepted in well-defined cases, where agents do not operate client accounts and the taxpayer is not registered on ROS. The relevant details for making payments were included in TaxFax of 30 May 2011.

There have been some pay and file issues for practitioners using Agent Certificates, as the ROS system will not always accept the IT38 return online. Some firms considered the option of applying for a Business Certificate as well as an Agent Certificate to give flexibility on filing. However, there can be a downside to flexibility in terms of opening the access that employees have to tax records, and most firms prefer to limit the number of people authorised to file returns. The matter was raised with Revenue, and the ROS developers were asked to investigate the reason for the filing glitch and to find a resolution. A temporary "patch" to allow practitioners to file CAT returns as an interim measure is available from the ROS Helpdesk.

Instalment Payments

The CAT instalment payment arrangements in s54 have been amended. Previously, the taxpayer could opt to pay tax in five equal instalments on the first five anniversaries of the valuation date. After FA 2010 the taxpayer pays in monthly instalments over a period to be agreed with Revenue (a period not exceeding five years). Revenue will normally agree to the maximum term of five years.

Section 54 also provides that the first instalment is due on "31 October immediately following the valuation date". This wording has the effect of accelerating the CAT payment date in some cases. The CAT year runs from 1 September to 31 August, so if a valuation date falls in September or October (the start of the CAT year), the CAT does not fall due until the following year, but the first instalment (if the taxpayer opts to pay by instalments) would be due nearly a year earlier.

For example, if the valuation date is 10 September 2011, the CAT would be due on 30 September 2012. However, the first instalment would fall due on 31 October following the valuation date, i.e. 31 October 2011. This only affects valuation dates falling in the months of September and October. In practice Revenue will normally allow a taxpayer to pay the first instalment on the date on which the tax would have been due.

It should be noted that the section that moved the CAT pay and file date to 30 September did not adjust s54 dealing with instalment payments. This gives taxpayers paying CAT by instalments an extra month if the valuation date falls in the period from 1 November to 31 August.

For example, if the valuation date is 1 May 2011, the CAT would be due on 30 September 2011. However, the first instalment would not fall due until 31 October 2011.

Revenue payments systems do not allow automated payments by standing order. A taxpayer who agrees to pay by instalments over a term of five years will be making 60 individual payments. The options are for payment by cheque (60 individual cheques to be processed) or payment by ROS (with the taxpayer logging on every month to make the payment). Revenue, having introduced the new CAT regime to reduce the level of administration required for CAT, has indicated a preference for instalment payments to be made via ROS.

Prior CAT Paid

On the ROS CAT form there is an entry for “prior CAT paid on same event” on the “Credits Deductible” tab. If an amending return is being filed, adjusting the figures on an earlier CAT return, this field should be filled out only if the prior CAT was paid using the pre-2010 system. If a return is filed on the current ROS system, it will displace any earlier return filed for the same CAT year, so if CAT was paid when filing the old return, the system will show an overpayment, and a refund will issue automatically.

However, if the first return was filed under the pre-FA 2010 CAT system, the details from the form would have been entered on the Revenue Ingress Computer System, and ROS has no access to this information, as there is no interaction between the two systems. In such cases the taxpayer needs to let Revenue know about the prior CAT paid by including it on this tab.

Same-Day Benefits

Where two same-day benefits have separate valuation dates, the tax should technically be calculated on the total benefit being taken on that date and then apportioned between the valuation dates (see Schedule 2, Part 1, para. 5 of CATCA 2003 and Revenue CAT Manual at para. 19.2).

The new ROS IT38 does not allow for this apportionment, and Revenue suggests that the assets being taken on each valuation date should be returned separately on the form. In many cases,

there will be no discernible tax difference between the two options (apportioning or treating as separate benefits). A distinction would arise if a return is required under the legislation because the total benefit that is being apportioned exceeds the return threshold (80% of the threshold amount) but the value of the first payment is not high enough (when taken separately) to trigger a requirement for a return. In practice Revenue is treating the first benefit as arising separately and is not requiring a return.

For example, a beneficiary taking total Class B benefits of €200,000 with an interim distribution of €20,000 has a requirement to pay CAT and file a return if the benefit is apportioned. That taxpayer is under 80% of the Class B threshold if the €20,000 is treated as a separate benefit, so that the entire Class B threshold is available (80% of the 2011 Class B threshold of €33,208 is €26,566.40). In practice the ROS system will treat this first payment as a separate payment that does not generate a CAT liability or an obligation to file a return.

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Secondary Liability for Non-residents

Secondary liability was abolished with retrospective effect from the date of passing of FA 2010, with the exception of non-resident cases. CATCA 2003 s45AA provides for secondary liability for a solicitor acting in a non-resident case. In principle

Revenue is seeking to hold an Irish-resident person responsible for CAT to facilitate collection. If a beneficiary is non-resident, the Irish-resident personal representative is liable, and if there is no Irish-resident personal representative, the estate cannot be administered without appointing an Irish solicitor to act, and the solicitor will be liable for the non-resident's CAT.

Closing the CAT File for a Non-resident Beneficiary

A resident personal representative (and possibly a solicitor) may have a secondary liability under s45AA if a beneficiary is non-resident. This liability is open-ended, and Revenue largely ceased issuing CAT clearance certificates when the new CAT regime came into effect in 2010. In order to allow personal representatives and their agents to close off the exposure to CAT, Revenue has agreed that a letter can be sent to it (Dublin City Centre District processes

CAT returns for non-residents) indicating that the assets that are passing to the non-resident are to be distributed and that the personal representative or solicitor is satisfied that any relevant pay and file obligations have been met.

If Revenue indicates within the timeframe of one calendar month that it is considering auditing, the assets relating to that beneficiary's benefit should be retained, pending the completion of Revenue's audit or enquiries, and receipt of a written confirmation that Revenue is satisfied that any CAT due has been paid. If Revenue does not intend to audit, there will be no response to the letter. In this context, silence is the best possible response, and once the retention period (one calendar month from the date of the letter to Revenue) has expired, the benefit can be paid out to the non-resident beneficiary. There is no guarantee that Revenue will not audit at a later date, but it will deal directly with the non-resident beneficiary.

The FA 2010 FAQs on Revenue's website (www.revenue.ie/en/tax/cat/leaflets/cat-probate-faqs.html) is the source document for this provision, and to date Revenue has declined invitations to put the practice on a statutory footing.

Some practitioners have had a concern about being able to evidence the date on which the letter was received by Revenue, as this starts the "one calendar month" period. In some cases, practitioners have been sending letters by registered post so the date of receipt by Revenue can be evidenced. In practice, given that the focus of the new regime is on reducing administration, Revenue has a preference for not receiving registered post correspondence and has indicated at TALC that the copy letter on the practitioner's file will be acceptable evidence that the letter was sent.

Acceleration of the Pay and File Deadline

FA 2011 brought the CAT pay and file deadline forward from 31 October to 30 September, so it is no longer aligned with other taxes.

In 2010 the ROS extension applied to CAT. The 2011 ROS pay and file deadline is 15 November 2011, but to date there has been no indication that this extended ROS deadline will apply to CAT.

Practitioners should bear in mind that clients may be unclear on the correct CAT deadline. Mid-year tax deadline changes often give rise to confusion, and in this case the deadline has been brought forward, so any confusion that may arise will result in late filing.

The acceleration of the CAT deadline occurred on 21 January 2011, which was nearly halfway through the 2010/11 CAT year. If a client received advice on 2010/11 CAT compliance in the period up to 21 January 2011, the payment date given would have been 31 October 2011, and this would have been correct at the time.

As a service to customers, Revenue issues a notice incorporating a paper Form IT38 to taxpayers who may have a requirement to pay and file a CAT return (normally identified from information forwarded by the Probate Office when a grant issues). As of time of writing, Revenue is still using the 2010 forms to send to beneficiaries, and pages 3 and 4 of the form refer to the "old" 31 October deadline. In addition, the standard ROS Notice of Acknowledgement form has not been updated and refers to the "old" due date of 31 October

2011. These documents can give rise to confusion for clients, who may file in October, relying on correspondence from Revenue. Revenue has subsequently issued e-Brief No. 47/2011, confirming that the pay and file deadline for the period 1 September 2010 to 31 August 2011 is indeed 30 September 2011. It notes that taxpayers who received correspondence from Revenue indicating that the deadline was 31 October are being contacted by letter to advise them of the revised date of 30 September.

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The Second Annual CAT Pay and File Deadline

It is not necessary for a tax agent to be formally registered as a tax agent to file a CAT return (in contrast to the requirements for income tax filing). However, if a return is filed and the practitioner is not registered as the tax agent, the CAT Notice of Acknowledgment and further Revenue correspondence may not be copied to the agent.

The ROS CAT system will not accept a “W” PPS number, and if a client has a “W” number, an application will need to be made to issue a replacement number if a CAT return is to be filed.

A PPS number is primarily issued for social welfare purposes but it is also used for tax. It does not become a tax reference number until it has been registered with Revenue. The Department of Social Protection (DSP) has a Client Identity Services’ Office (Tel. 071 967 2500), which can confirm whether a person with a “W” PPS number has already been issued with a replacement PPS number and arrange a new PPS number, if required. Revenue indicated that the DSP uses a fast-track process to replace “W” numbers within two to four days.

Practitioners should check that the clients PPS number is “live”, i.e. in use already for tax purposes. If the number is old and dormant, or new and unused, the PPS number needs to be registered with Revenue before it can be used for e-filing. This point will be particularly important as the e-filing deadline approaches.

Conclusion

The CAT Review Project had many facets, and Revenue successfully co-ordinated a very extensive modernisation programme. 2011 will be the first year in which the ROS system is used to process a full year’s CAT returns, as the 2010 return deadline just covered valuation dates falling between 14 June 2010 and 31 August 2010 (with returns for any valuation dates in the 2009/10 CAT year being accepted by concession).

There are a number of minor issues to be addressed in relation to the legislation, and there have been some teething problems with the CAT ROS system. In particular the payment mechanism under ROS is clumsy, with limited payment options for both forms of certificate, no RDI option under Agent Certificates, a limited RDI option for Business Certificates if practitioners do not want to maintain a central client account, and no provision for automating instalment payments. The glitch in relation to filing IT38s online using Agent Certificates has been time-consuming and frustrating for the firms involved.

In addition, the current-year acceleration of the payment deadline has reduced the timeline for paying CAT to a period that can be as short as one month, which is very short for a tax liability that can be triggered by an unexpected death.

If any practitioners identify further CAT issues in the process of filing 2010/11 CAT returns that may be of interest to members or should be raised with Revenue via TALC, they might forward details to Mary Healy at the Irish Tax Institute (mhealy@taxinstitute.ie).



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