



CAT Valuation Date

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Points to note:

- › In a rising or falling market the selection of a valuation date may have quite an impact on the level of tax.
- › Date of death and date of grant are common valuation dates – they are not the only possible dates.
- › There can be several valuation dates where multiple benefits are taken from the same estate.
- › Date of death valuation dates are common, and easily missed – consider if there is joint property, or a reversion passing on death of a life tenant, or if the beneficiary is in occupation.
- › Litigation and family disputes may push back valuation dates.

- › A distribution from the residue may indicate that the valuation date has arisen.

What's in a Date?

CAT compliance is firmly centred on the concept of the “valuation date”, which determines when the property needs to be valued, and starts the clock on the filing of the CAT return and the tax payment and exposure to interest. Unlike CGT or income tax (which are dealt with on a pooled annual basis), each CAT benefit is dealt with individually and has a separate valuation date.

The valuation date for a benefit is essentially the point in time at which the beneficiary becomes beneficially entitled in possession. The rules on when a valuation date falls are quite wide-ranging and flexible, so that they can take account of all the possible permutations and combinations of events that may give rise to a

gift or inheritance. However, legislation that is geared towards providing flexibility does not always provide a simple rule to follow and the valuation date legislation (section 30 Capital Acquisitions Tax Consolidation Act 2003) is no exception.

Specific Rules

Section 30 CATCA 2003 sets out a number of clear-cut specific provisions followed by a general rule.

The specific rules provide that where assets pass in circumstances where the gift is perfected by a death, the valuation date will be the date of death. The classic example of this is a *donatio mortis causa* – i.e., a gift made in contemplation of death, where the person giving the gift is on his/her deathbed and makes a gift to take effect on death. If the death duly occurs, the beneficiary

takes the benefit, but if the donor unexpectedly recovers and rises from his/her deathbed the gift falls away, the asset reverts to the recovered donor and the beneficiary never becomes entitled to it. As the death perfects the gift, the valuation date is the date of death, which is the earliest point in time when the beneficiary can claim the asset. Another classic example of a gift being perfected by death is the case of a donor who had made a lifetime gift but retained a power of revocation. During the donor's lifetime, while he/she has the right to revoke the gift, the beneficiary is treated for CAT purposes as not having taken the property. On the donor's death, if the right to revoke dies with the donor, a benefit passes across for CAT purposes and the valuation date is the date of death.

The valuation date for a gift is also clear-cut, as the beneficiary is entitled to the asset from the date of gift, and therefore the valuation date is the date of gift. This rule is not affected by subsequent events so that if the gift becomes an "inheritance" because of the death of the disponent within two years of the gift, the valuation date for the benefit will not be affected by the transformation of the benefit from that of a gift to an inheritance. As the valuation date for a gift is generally straightforward this article will mainly focus on the more complex area of inheritances.

General Rules

The category that most inheritances fall into is the general one that provides a choice of three dates for the valuation date, which will be the earliest of these three options, i.e. it will be the earliest date on which the personal representative was entitled to retain the benefit, on which he/she retained the benefit, or the date of payment or other effective delivery.

The issue is how to identify when the personal representative is "entitled to retain the subject matter of the inheritance for the benefit of the successor" The concept of retainer is central to this general rule, and is a holdover from the legacy duty legislation that predated CAT. In *Lord Advocate v Wotherspoon's Trustees* (1930) SLT82, Fleming LJ considered in some detail what retainer means:

"Retainer is something different from the holding or retention of a trust estate by

the trustees in order to carry out the trust purposes. It must be a retainer in the right and for the benefit of the legatee – something of an analogous character to actual delivery or payment. It is an essential feature of the retainer that the legatee should be entitled either to demand payment or delivery or, at all events, should have the beneficial enjoyment of the legacy through the hands of the trustees. An obvious case of retainer is the holding by an executor of a legacy on account of a personal disability on the part of the legatee to give a discharge therefor."

Retainer may be "analogous ... to actual delivery or payment" but the point of "retainer" will often be different to the actual date of delivery or transfer of an inheritance to a beneficiary, particularly in the current climate when fiduciaries and agents are aware of the risk of being secondarily liable for CAT, and may be reluctant to actually release the benefit until a CAT clearance certificate has been secured. If the benefit can be identified and passed over but is retained pending receipt of tax clearances, the point of retainer will be the point at which the benefit is, or can be, allocated to the beneficiary, not the later date when the CAT clearance issues and the benefit is distributed.

The "Date of Death" Trap

The valuation date for the benefits needs to be identified as early as possible to ensure a timely payment of tax, and it is important when dealing with an estate to bear in mind that some valuation dates arise immediately on death. The date of death will be the valuation date if the beneficiary has an immediate entitlement to the property. A classic example is the inheritance by a joint tenant by survivorship. The surviving joint tenant is entitled to the joint property on the death by operation of law, so the date of death will always be the valuation date. Another typical example of an entitlement vesting immediately on a death is the receipt of a remainder interest taken on the death of a life tenant. Again the benefit passes on the death by operation of law, and the valuation date will be the date of death.

A valuation date can also arise at date of death if the beneficiary is in possession from the date of death – for example, if a residence passes to a life-partner who is already living in it, or a business (such as a farm) passes to a

beneficiary who has an active role in running it for the deceased, and who begins to run it for his/her own benefit from the date of death. The line between a beneficiary who was active in a business entering onto a property as a caretaker to ensure that its value is maintained while the estate is being administered, and a beneficiary who is inheriting a business entering onto a property and taking it over on the death, may be a thin line and one which is not easily identified. However, if the profits of the business or any income from the property are passed on to the executor's account for the estate, rather than going directly to the beneficiary, this would indicate that the beneficiary is not yet entitled to the asset.

CAT is due for payment within four months of the valuation date, which will give sufficient time for the payment of tax in most cases. However, it is not unusual for beneficiaries to be unclear on the title to property (in particular, whether it is held in joint names as tenants in common or joint tenants) and to delay seeking professional advice on the estate and tax issues until some weeks or months after a death. In such cases the file and pay deadline for a date of death valuation date can easily be missed, giving rise to an exposure to interest and penalties. The first task when advising on an estate should be to check whether any of the benefits which are passing could have a date of death valuation date.

Administration of Estates

In a solvent estate the personal representative might make advance payments from the estate to a beneficiary. Each advance payment is likely to have its own valuation date so there could be several of these valuation dates before the personal representative is finally in a position to retain the balance of residue for the beneficiary.

A pecuniary legacy is a cash benefit and, in general, the personal representative can rely on the executor's year (i.e., the legal rule that the beneficiaries cannot compel personal representatives to distribute the assets of the estate until at least one year has elapsed from the date of death) to give them time to administer the estate. It should follow that the valuation date for a pecuniary legacy may not arise until the end of the executor's year, though if the estate is administered quickly, and the date of grant of probate occurs within the year, the

valuation date is then likely to be the date of grant.

A valuation date can arise if a personal representative makes a part payment of a benefit, or a payment on account of a benefit, which is not otherwise being "retained", for the beneficiary. The valuation date will be the date that the part payment is made. A personal representative who distributes piecemeal as he/she receives assets may create a "string" of successive valuation dates.

Revenue practice is to treat the advancement as a part payment of the whole, so that if a benefit is paid in two parts the CAT is calculated on the entire benefit and apportioned to the part paid and the part retained (rather than two separate calculations being carried out as each part payment is made).

In general, where the estate passes on intestacy, the valuation date should not arise until the letters of administration are extracted, as the beneficiaries cannot take or call for benefits until there is a representative appointed to administer the estate. However, it could happen that a person who is intermeddling with an estate, and effectively acting as if he/she was appointed as administrator, could transfer assets and trigger a valuation date before the grant of administration.

The residue is the balance of the estate, left over after all the specific benefits have been allowed for, and it bears the debts and liabilities of the estate. It can take some time to bring the administration of the estate to the point where the value of the residue can be ascertained, and the residue cannot be retained for the beneficiaries until the amount of the residue is known.

It should be noted that a payment on account of the residue will generally be an indication that the residue can be determined, and there is an

argument that such a payment will trigger the valuation date for the entire residue, not just the portion advanced. The Revenue Guidance Notes on s30 indicate that, where advances are made out of an inheritance, each payment in advance or part payment is treated as being retained on the date of such payment as if it were a separate inheritance. It would follow that if a successor is entitled to a residuary bequest and receives shares worth €100,000 on 1 March 2004, cash amounting to €10,000 on 1 June 2004 and the

balance on 1 August 2004, there will be three separate evaluation dates (1 March, 1 June and 1 August) even though there was only one benefit provided in the Will (the share in the residue).

Sale in the Course of Administration

If real property is sold by the personal representatives prior to the valuation date and before the grant is taken, the CAT arising for the beneficiary cannot be a charge on the property (as the charge arises at the valuation date). The CAT is unlikely to be paid at that stage and the purchaser of the property will require a CAT Clearance Certificate as there is a death on title within 12 years of the purchase, and therefore the purchaser will be concerned that there could be unpaid CAT which will attach to the property. This situation is generally dealt with by the vendor's solicitor obtaining a letter from Revenue

confirming that the property is not subject to a charge to CAT.

The Revenue CAT manual (available at www.revenue.ie/services/foi/s16_2001/catman6.pdf) states that if a property is sold in the course of administration by the personal representatives before the valuation date, they will issue a letter advising that the charge to CAT will attach to the proceeds of such sale and not to the property

itself. Revenue will generally want sight of the contract for sale before issuing the letter of confirmation.

Failure to Sell in the Course of Administration

In the current market executors are finding it difficult to sell property. This can put pressure on the estate and beneficiaries as the price continues to fall, and beneficiaries cannot access sale proceeds to fund their tax.

Failure to sell will not push back a valuation date. The executor's job is to pay debts and distribute the estate in line with the Will or intestacy, and he/she has power to sell assets if he/she needs cash to distribute the estate or to facilitate the beneficiaries. However, he/she can also distribute *in specie* rather than selling the asset, and if the disposal of an asset is not essential to achieve the division of the estate the failure to sell the asset will not be material to the valuation date.

If the beneficiary is relying on receipt of the sale proceeds to pay the tax, delay in sale may result in a delay in payment of the tax, giving rise to interest and penalties. In addition, the beneficiary may be watching the value of the property fall over time, so that the valuation date value (on which he/she will be paying CAT) may be substantially higher than the final sale price.

If the recent e-Briefs issued by Revenue – indicating zero tolerance for delay in the payment of CGT and the filing of CGT returns – are any guide to the Revenue's approach, then it is likely to be difficult to secure any leeway from Revenue where beneficiaries have difficulty in funding tax because of a failure to sell.

The beneficiary may argue that it is virtually impossible to establish a value for a property where the market is volatile and dropping. However, the same issue would arise in a volatile rising market and over the years of the property boom the value of a property has been established by formal valuation by an expert such as an estate agent, and, presumably, Revenue would take the view that in the current falling market an estate agent can still provide a valuation that can be relied on.

The position might be different if the sale is required to enable the personal representative to complete his/her work in administering the

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estate. For example, if the asset to be sold is part of the residue and the value of the residue cannot be established until the property is sold, then the valuation date cannot arise until the sale, as the residue cannot be retained until the value of the residue can be ascertained.

Any issue that prevents the personal representative from establishing the value or extent of a benefit will defer the valuation date, and many factors can affect the residue as the general debts and liabilities come from the residue. For example, if a testator were to leave the residue (consisting of a house) to 10 beneficiaries with a direction to the executor in the Will that the house is to be sold and the proceeds of sale distributed equally between the beneficiaries, the valuation date would not arise until the sale occurs as it will not be possible to ascertain the value of each benefit before the sale price and costs of sale can be determined.

Impact of Litigation

The valuation date arises because the estate reaches the point when the beneficiary's benefit can be identified and allocated to him/her. If an event occurs which results in uncertainty on whether the beneficiary will take the benefit, or on how much of the benefit will be available to him/her, then this will displace any existing valuation date, and a new valuation date should be selected.

There can be a number of factors that affect the devolution of the estate, and if the level of the estate, or the entitlement to a particular beneficiary's benefit, are in question, then the valuation date will inevitably be affected. However, the mere fact that there is litigation in the estate will not defer the valuation date for any beneficiary whose interest is not directly affected.

Common actions against an estate would include claims by a surviving spouse for a legal right share under s111 Succession Act 1965, and such a claim could affect the assets passing to all of the other beneficiaries. It should be noted that these claims only affect assets passing through the estate, and an asset passing by operation of law outside the estate (such as an interest in a joint property passing by survivorship) will not be affected. The valuation date for the joint property will be the date of death, but the valuation date for other benefits taken from the

estate should not arise until the spouse's claim is settled. Another common type of claim against an estate is a claim by a child that – although he/she does not have a right to a set portion of the estate – the court should make provision for him/her under s117 Succession Act 1965, on the basis that his/her parent failed in their moral duty to make proper provision. Any such action will defer the valuation date for any benefits affected.

There may be a dispute about the level of benefit received giving rise to a claim for legitimate expectation or a claim for quantum merit, i.e., a claim that there was an implied promise that work done would be paid for and therefore the estate owes the value of the work to the claimant. Any such claim is likely to affect the residue but may not impact on other benefits if the residue is larger than the level of the claim. Alternatively, there may be a challenge to the validity of the Will arising from alleged undue influence, incorrect execution of the Will, or the lack of capacity of the donor, and any such claim would affect the devolution of the entire estate and push back the valuation date for any benefit passing through the estate.

Selection of Valuation Date

The fact that the valuation date is not clear-cut in all cases means that the beneficiary can occasionally select between several dates, one of which may suit better from a taxation perspective. Generally, the selection of a valuation date will have an impact on the level of tax if an asset is rising in value, falling in value, or is very volatile with a value that changes from day to day. The best example of this is probably the rise and fall in the residential property market. If the deceased died in 2004, the grant of probate was extracted in December 2007, and the property is sold in September 2008, then the 2004 date of death value, along with the 2008 date of sale value, are both likely to be lower than the 2007 date of grant value. However, if the valuation date is in 2004 the CAT should have been paid within four months so the benefit of the lower value may be offset by any interest accruing.

Revenue's Role

CAT is based on a self-assessment system and the beneficiary usually selects the valuation date by including it in the valuation date box on the front of the IT38 CAT Return Form. The legislation gives Revenue the power to determine

the valuation date as s30 (6) CATCA 2003 states that Revenue can determine the valuation date in respect of the whole or part of any inheritance. The taxpayer has the right to appeal against this determination (under s30 (9) CATCA 2003). In cases of doubt, s30 (8) provides that Revenue may agree with the taxpayer on a particular valuation date to be applied to the estate. This might arise in a situation where much advancement had been made, in order to avoid a multiplicity of valuation dates.

In practice, if the valuation date falls within one of the two most common categories (date of death or date of grant of probate/administration for an estate) Revenue will generally not seek to impose a different date.

Relevance of Valuation Date

The valuation date is central to the operation of CAT as:

1. CAT is due on the valuation date.
2. The value of any asset is to be established on the valuation date.
3. Instalments are due for payment by reference to the valuation date.
4. Interest runs from the valuation date if CAT is not paid within four months.
5. CAT is a charge on the property which the benefit consists of on the valuation date.
6. The farmer test for agricultural relief is carried out on the valuation date.
7. A farmer has to be resident in the three years following the year in which the valuation date falls.
8. Property must qualify as agricultural property on the date of the benefit and on the valuation date in order to qualify for agricultural relief.
9. Tax is a charge on the property of which the gift or inheritance consisted at the valuation date. If a property is sold before the valuation date arises the charge does not attach to the property.
10. The question of whether property is relevant business property is determined on the valuation date (e.g., one test is shares giving 25% powers of voting on the valuation date).