The transfer of assets between spouses and civil partners is not subject to tax so the focus of most inheritance plans is the transfer of wealth/assets to the next generation.

Parents who are considering the transfer of wealth to their children generally want to ensure that they safeguard the value of assets and businesses, maintain wealth within the family (in the event of the separation or divorce of their children), and pass wealth on tax efficiently.

Relief available

There are a number of reliefs available in respect of assets passing to the next generation. There are various conditions attaching to each of the reliefs and therefore, it is advisable to consider these reliefs early to allow for planning so that all of the conditions of the desired relief can be met. The main reliefs are discussed briefly below. It should be noted that these reliefs are complex and great care should be exercised to ensure that the relief can be secured and retained.

**CAT Dwelling House Relief**

If dwelling house relief is available no CAT arises on a gift or inheritance of a dwelling house.

A “dwelling house” is a building or part of a building, which is used or suitable for use as a dwelling and grounds of up to one acre which are occupied and used with the dwelling.

A beneficiary must have occupied the dwelling as his only or main residence throughout the 3 years prior to the gift or inheritance (additional conditions apply in the case of a gift) or 3 out of the 4 years if the dwelling has been replaced.

The beneficiary must retain the dwelling house, and occupy it as a main residence for six years after the gift or inheritance (unless he is over the age of 55 at the date of gift or inheritance) or 6 out of the 7 years if the dwelling is replaced. The beneficiary must not be beneficially entitled to any other dwelling house at the date of gift or inheritance.

**CGT Retirement Relief**

Sections 598 and 599 of the Taxes Consolidation Act 1997 provide relief from capital gains tax where an individual is disposing of chargeable business assets.

Section 598 applies in cases where the disposal is made to persons other than a child or a qualifying niece or nephew and there is a limit of €750,000 on disposal of qualifying assets. Once the €750,000 limit has been exceeded tax will be charged on the full amount of the disposal.

Section 599 TCA ’97 deals with the disposal of qualifying assets to certain family members (i.e. children and qualifying nieces/nephews). There is no limit currently in place on the disposal of chargeable business assets under S. 599. However, from 01 January 2014, a limit of €3 million will be in place on chargeable assets to a child or qualifying niece or nephew where the disponer is 66 or over.

CGT retirement relief applies where a person over the age of 55 years transfers qualifying assets which are part of a trade or a business or held by a family company carrying on a trade or business.

**CAT Business Relief**

CAT business relief enables the donee/successor to reduce the value of a relevant gift/inheritance by 90% of its taxable value.

In order for assets to qualify for business relief they must constitute relevant business property and the relief is not available if the value of the asset is derived “wholly or mainly” from investments. The assets must have been owned by the disponer for a period of 2 years before an inheritance or 5 years before a gift.

The relief will be withdrawn if the relevant business property is disposed of within 6 years of the date of gift/inheritance and not replaced within a period of one year from the date of disposal. If part of the relevant business property is development land then the clawback period is extended to 10 years.

**CAT Agricultural Relief**

Agricultural relief applies to gifts and inheritances of agricultural property and reduces the taxable value of a gift or inheritance by 90% of the value of the agricultural property.

To avail of this relief a person must come within the definition of a “farmer” for the purposes of agricultural
relief. A “farmer” is defined as an individual who can show that on the valuation date for the gift or inheritance, not less than 80% of the market value of the property to which he is beneficially entitled (after the taking of the gift or inheritance) is agricultural property.

Any relief given may be wholly or partly clawed back within 6 years of the gift or inheritance if the agricultural land is sold or compulsorily acquired and not replaced within a year of the disposal by other agricultural property or if the beneficiary is not resident in Ireland in any of the three years of assessment immediately following the year of assessment in which the valuation date falls.

This clawback period is extended to 10 years if the asset has development value.

**Other Considerations**

Consideration might also be given to the following:-

4. Reliefs may be available at an early stage in the child’s life that will not be available later. For example agricultural relief is generally only available to a “farmer” as defined and the test is a purely financial one. A beneficiary who takes agricultural property early on in life before he has any significant opportunity to accumulate personal wealth will generally qualify as a farmer. Dwelling house relief will only be available if the beneficiary does not have a beneficial interest in another dwelling, so parents should consider this relief before children start to acquire their own properties.

5. If CAT arises on the transfer of property which also gives rise to CGT for the parent, the CGT paid can be credited against the CAT in most cases, thereby reducing the overall charge to tax to 30%. The property transferred must be held by the child for a period of two years or the relief is clawed back. It should be noted that any CGT losses arising on a transfer to a connected party such as a child are “ring-fenced” to future disposals to the child.

6. If clients have S. 60 policies the level of cover should be reviewed from time to time. Values have fallen in recent years thereby reducing the exposure to CAT, but the CAT rate has risen to 30%, and CAT thresholds have fallen.

The CAT relief only applies if the policy proceeds are used to pay inheritance tax within 2 years of the disponer’s death. If the assets remain in a trust for more than 2 years the CAT relief may not be available.

If tax advice is required on any of the points covered in this article, please email info@ohanlontax.ie.

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**Caveat:** These notes are intended as a general guide. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.