Transfer of Assets to Spouses and Family

What do I need to consider if transferring property?

• Property already owned with your spouse on a tenants-in-common legal basis should be changed to a joint-tenants basis.

• If there is a mortgage on the property you wish to transfer the financial institution must consent to the transfer of the property into joint names.

• Assets can only be transferred when you are solvent.

• If a person that has transferred property is declared bankrupt the courts can seek to reverse any transfers made in the previous 5 years.

• Transferring property to a spouse is the most tax effective way of transferring assets.

What is the difference between a tenancy-in-common and a joint tenancy?

Tenants-in-common

Each person owns a specified portion of the property. The portions can be equal or one person can own a greater portion than the other. In a tenancy in common scenario the shares of the co - owners will not pass to the survivor when one of the owners dies. The will of the deceased owner determines who takes his/her interest. If no will exists, usual laws of intestacy apply. This situation could an unintentional situation whereby multiple people own shares in a property.

Joint –Tenants

Both parties own the whole property. If one person dies the property automatically passes to the survivor. This is the most common firm of property ownership for married couples, cohabiting couples and sometimes close family members.

Transfer of the Family Home into Joint Names

Transferring your family home, into joint names ensures that the property automatically passes to the surviving spouse/ cohabitant. There are a number of advantages to putting the family home into joint names such as, the reduction of probate costs.

Transfers between spouses are exempt from stamp duty, capital gains tax and gift tax – irrespective of whether the property is a family home or a business property.

Transfer to Child(ren)

A transfer of assets to a child or children during your lifetime can give opportunities for tax planning and in certain situations tax exemptions.

Business Assets (shares)

Traditionally, if a parent qualifies for “retirement relief” there is a CGT exemption on the transfer of assets to children.

Certain conditions must be met including:

• The parent (shareholder) must be 55 years or older when transferring the assets

• The assets must be owned for 10 years or more

• S/he must have been a working director or 5 years before the transfer

If the value of the assets being transferred is less than €332,084 Capital Acquisitions Tax (CAT) will not apply. This threshold was reduced from €414,799 in 2010.

Transfer of Family Farm

Transferring your family farm to your child (or favourite nephew/niece) is exempt from Capital Gains Tax (CGT) provided:

• The farmer is over 55 years of age at the time of the transfer. Qualifying assets include agricultural assets owned and used by the farmer for a minimum of 10 years.

• Land must be transferred to the same person.

Changes in Budget 2011

Significant changes were made in the last Budget which will impact on the taxation implications of family transfers.

Exemptions and reliefs abolished include:

• Site transfer from Parent to Child

• Consanguinity Relief (reduced stamp duty rate for transfers between relatives) on residential property only was abolished

Capital Acquisitions Tax (CAT) / Inheritance Tax Changes

The Capital Acquisitions Tax (CAT) thresholds have been reduced by approximately 20% since last year. The new tax-free thresholds are:

• Group A: €332,084 – Child. Reduced from €414,799

• Group B: €33,208 – Brother, sister, niece, nephew or lineal ancestor or lineal descendant. Reduced from €41,481

• Group C: €16,604 – All other cases. Reduced from €20,740

For More Information

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