

TAX PLANNING IN A RECESSION

Accountants must consider how to best manage issues such as falling asset values and deteriorating cash-flow for their clients, as Mark Doyle explains

It is full steam ahead for the Irish recession. Asset values have fallen significantly with no immediate prospects for recovery; cash is tight; and many businesses are beginning to feel the pinch. Every cloud has a silver lining and this is the perfect opportunity to take stock of your tax position and take advantage of the country's current predicament.

Capital Gains Tax losses

Share prices have taken a battering in recent months. It appears that the fall in value is here to stay for the foreseeable future. It is worth considering locking in losses at this point so as to crystallise the tax value of the losses. This might be done to make the loss available against current year gains or for use against future gains. Where there is no prospect of future gains in the shares, it may well be simple to crystallise the loss. Difficulty arises when the share is expected to increase in value in the short term or where there is difficulty selling the shares as they have become de-listed (e.g. Anglo Irish Bank). While advising a client on crystallising losses, practitioners should be aware of the following:

- The 'bed and breakfast' provisions contained in S581 TCA 1997;
- The restriction in connected persons losses in S549 TCA 1997; and,
- That certain investments listed in a portfolio may be funds the losses on which are not available against capital gains.

With clever structuring, it may be possible to unlock the losses contained in an asset, while still maintaining control of that asset. It is also worth considering the provisions in S238 TCA 1997 pertaining to negligible

value claims. This section provides loss relief where the owner of an asset satisfies the inspector that its value has become negligible. The loss is calculated as if the asset was sold at an amount equal to its current value. This relief can be useful where there is no ready market for disposing of an asset.

The loss arises not at the date at which the asset lost its value, rather the loss is deemed to arise for tax purposes when the claim for the relief is made to the inspector. It appears that, in practice, Revenue allows, on a concessional basis, a loss that is made within 12 months of the end of the year of assessment for which relief is sought to be admitted, provided that the asset was of negligible value in the period concerned.

Passing assets to the next generation

With reduced asset values, now may be the time to consider passing assets to the next generation. All taxes on gifts (CAT, CGT and Stamp Duty) are based on current market value. Gifting at a low value now should have reduced tax costs and wealth will accrue to the children going forward.

We should see an increased use of trust structures for wealth protection. In recent times, clients became more relaxed about the age at which children get access to family wealth. Recent experience has evidenced that less-experienced investors can lose a lot of money very quickly and clients are now more reluctant to leave assets directly to children. We expect to see more use of the discretionary trust structures that were common place in the past.

Development land losses – individuals and partnerships

Many practitioners are faced with the prospect of finalising accounts for sole traders and partnerships involved in residential land development. This land is likely to be significantly diminished in value. Stock should be valued at the lower of: cost or net realisable value. This is a basic accountancy principle. In this regard, tax losses are likely to arise. The advisor must then consider how to best utilise those losses.

It is worth noting that taxpayers may elect not to apply the relief in S644A TCA 1997, which applies the 20% tax rate to profits arising on the sale of residential development land. Any losses then arising on residential land may be used to offset total income arising to the taxpayer in the normal manner.

Difficulty can arise where a taxpayer has profits in one land development trade and losses in another; in this case, if the election is made for S644A TCA 1997 not to apply, then the profits from dealing in land will be taxable at the marginal rate. It could be argued that the provisions of S644A TCA 1997 apply only to 'profits or gains' and, thus, have no impact on losses.

The ability to shelter other income from tax by offsetting losses in this manner is a valuable relief for taxpayers, and advisors should be aware of this when preparing tax returns for their clients.

Remember to take care when dealing with loss claims as there are a number of pitfalls to avoid.

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