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Irish Life



Years of
Experience

CAPITAL ACQUISITIONS TAX

AN ADVISERS GUIDE



For Financial Advisers only - this is not a customer document

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This is an outline of the current tax and legal issues that may need to be considered when you are putting together a financial planning or protection arrangement for your clients and it is based on an interpretation of current legislation and Revenue practice. (May 2015)

It is recommended that professional legal and tax advice is sought to ensure that any arrangement put in place is appropriate to each individual's circumstances.

Whilst every care has been taken to ensure that the information in this Guide is accurate, Irish Life Assurance plc does not accept responsibility for errors contained in this document. This Guide does not constitute tax or estate planning advice and has not been prepared based on the financial needs or objectives of any particular person, and does not take account of the specific needs or circumstances of any person.

Information is correct as at May 2015 but is subject to change.

INTRODUCTION

In the past "estate planning" was something we believed to be only for the elite, very few wealthy individuals and their families in our society. However, this is no longer the case. If your clients are planning to leave their house, any savings or any other assets to their family, you, as their Financial Adviser, can help make sure the real value of these assets is not reduced by Inheritance Tax.

Despite the recent downturn in the economy, it is still important to protect estate values. Reductions in the tax free thresholds, together with increases in the capital acquisitions tax rate, have resulted in more and more people who previously did not have to give consideration to this area now needing to do so.

GETTING STARTED

Very many people start off by looking to save tax and avoid legal problems. While this is vitally important, we believe that it is equally important to try and plan for what your clients would like and what is practical in their particular family or business circumstances.

So you start with the facts and your clients intentions, and then look to minimising any problems and plan for any tax impacts that cannot be overcome.

WISHES

Ask your clients some initial questions:

What would you like to happen on your death? Does everything go to a spouse, a partner, some to children, a charity, a friend? Are there practical considerations?

Your client may have a good idea of what they want to happen, but has this been legally copper fastened, have they made a Will?

MAKING A WILL

There are many good reasons to make a Will:

- A Will ensures that the estate will be divided according to the individual's wishes and not as the Succession Act dictates.
- For people with young children it provides an opportunity to appoint legal guardians to the children in the event that both parents should die together, in a car or plane crash, for example.
- The exercise involves a useful financial review. It highlights just how financially prepared your clients family would be in the event of unexpected death.
- A Will is an essential part of planning for Capital Acquisitions Tax. By making a Will an individual can, for example, make maximum use of the thresholds for his/her children and the spouse and civil partner exemption from Inheritance Tax.
- Generally speaking there is less delay and dispute where an individual dies and leaves a Will than where no Will exists.

Further information on Wills and the Succession Act are contained in Appendix I and II.

INHERITANCE TAX

Inheritance Tax comes under the heading of Capital Acquisitions Tax.

Capital Acquisitions Tax (CAT) is the tax which is charged when you receive a gift or an inheritance. CAT comprises two separate taxes - a Gift Tax payable on lifetime gifts and an Inheritance Tax payable on inheritances received on a death.

WHO IS LIABLE TO THIS TAX IN IRELAND?

Although the beneficiary of the estate is primarily liable for the payment of Capital Acquisitions Tax, whether or not a charge to tax arises is dependent on whether the donor (the deceased person who is "providing the inheritance") or the beneficiary (the person receiving the inheritance) is resident or ordinarily resident in the state at the date of the gift or inheritance.

If the donor or the beneficiary is resident or ordinarily resident in Ireland, then the entire estate will be liable to Capital Acquisitions Tax here.

If both the donor and the beneficiary are not resident or ordinarily resident in Ireland, then only Irish property will be liable to tax e.g. Irish property, shares in an Irish company, money in an Irish bank account.

WHO PAYS THE TAX?

It is the person receiving the gift or inheritance who is liable to CAT and not the person or estate providing the benefit.

Self Assessed Tax

On death a Revenue Affidavit has to be completed by the personal representatives of the deceased's estate. This Affidavit sets out details of the deceased's assets and gives the names and addresses of beneficiaries.

It is not only the assets of the estate which must be included on this form. If, for example, the proceeds of a life assurance plan have been left in trust to particular beneficiaries, even though these proceeds do not form part of the deceased's estate, full details of the plan and the beneficiaries should be included in the Revenue Affidavit.

Details of previous gifts/inheritances made by the deceased must also be included.

A Capital Acquisitions Tax return must be completed by a beneficiary if the value of a gift or inheritance exceeds 80% of the appropriate threshold amount.

Payment of Capital Acquisitions Tax

The tax is due and payable on the valuation date indicated below.

Capital Acquisitions Tax (CAT)

31 October 2015

Payment of CAT on gift/inheritances where the valuation date is between 1 September 2014 and 31 August 2015.

If tax is not paid by the relevant payment date interest will be charged.

If your client receives a gift or inheritance they may be obliged to file a return before the above date even in circumstances where there is no liability to tax on the current benefit. In the case of gifts the Revenue may write to individuals requiring them to make a Return or a Nil Return as the case may be.

Donors of gifts may also be called upon to make a Return in certain circumstances.

Valuing the Assets

The first step in calculating a liability to CAT is to assess the value of the assets which will be passed on. Tax is payable on the value of all the assets inherited / received.



Tax is based on the "market value" of assets. "Market Value" is the price which, in the opinion of the Revenue Commissioners, the assets would fetch if sold on the open market in such a manner that best price is obtained. No account is taken of the fact that a forced sale could depress market value. If the Revenue are not satisfied with a valuation submitted, they can obtain their own valuation. Where there is a difference, the Revenue can impose their valuation. The Revenue valuation can be appealed so the valuation in practice ends up somewhere between the two.

CAT Rates

For new gifts and inheritances received on or after 5th December 2001 tax is calculated according to the total of all gifts and inheritances received from all sources since 5th December, 1991. The following CAT table currently applies:

| | Tax Rate |
|-----------------|----------|
| Group Threshold | NIL |
| Balance | 33% |

CAT Thresholds

The Group threshold amounts vary depending on the relationship between the beneficiary and the disposer, i.e. the person providing the gift or inheritance.

| | | |
|---------|----------|--|
| Group 1 | €225,000 | Where the person receiving the property is a child of the disposer or of the civil partner of the disposer or a minor child of a deceased child of the disposer or of the civil partner of the disposer, or a minor child of the civil partner of a deceased child of the disposer, or of the civil partner of the disposer. |
| Group 2 | €30,150 | Where the person receiving the property is a lineal ancestor, descendant, a brother/sister, or child of a brother/ sister or the child of a civil partner of a brother or sister of the disposer. |
| Group 3 | €15,075 | All other cases |

The threshold amounts are those currently applying.

Aggregation

Under the current aggregation rules all benefits from Group 1 will be added together with an overall threshold of €225,000. Benefits from Group 2 members (brother, sister, grandparent etc) will be added together for the purpose of the €30,150 threshold, and benefits from Group 3 members (strangers) for the purpose of the €15,075 threshold. So in effect a beneficiary can potentially receive up to €270,225 tax-free if the benefits come through different "groups".

WHAT ASSETS ARE LIABLE TO INHERITANCE TAX?

The personal representatives of the deceased must list all assets and liabilities of the deceased when completing a tax return in relation to Inheritance Tax. Tax is levied on the total net value of all assets received by a beneficiary, other than a legal spouse or civil partner. All assets are taken into account, the family home, a second home or investment property, the value of all investments, including cash, pension and life assurance benefits as well as all personal property e.g. house contents, jewellery etc.

Reliefs and Exemptions:

Certain reliefs and exemptions apply to certain types of assets. These have been introduced over the years primarily to encourage private enterprise and to avoid the forced sale of a family farm, business or the family home in certain circumstances. The main exemptions/reliefs are:

Spouse or Civil Partner Exemption - gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT.

Agricultural Relief –the value of farmland, buildings and stock can be reduced by 90% where the beneficiary is a qualifying farmer and he or she holds the property for a minimum of 6 years.

Business Relief – can provide a similar reduction of 90% in the value of certain businesses or private companies, where both the business and the beneficiary meet certain qualifying conditions.

Family Home Relief - exemption from Gift and Inheritance Tax is available on the value of certain "dwellings" with up to an acre of land where the beneficiary meets certain conditions which ensure that the property was, and continues to be, their home.

Life Assurance Relief – the proceeds of life assurance policies, where the plan was effected specifically for the payment of Inheritance Tax, will not be subject to Inheritance Tax - provided they are actually used to pay the tax bill.

All reliefs are highly qualified; details of the conditions that apply are contained in the Appendices at the end of this document.



Spouse or Civil Partner Exemptionbeware

Perhaps the most important relief from inheritance tax is the 'spouse or civil partners exemption' where gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT. This relief currently applies only in the case of a "Legal Spouse" or "Registered Civil Partner". Cohabitants who are not married are

currently (May 2015) treated as strangers for Inheritance and Gift Tax purposes.

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Our society today is changing and more and more people are living together in 'non-married' situations.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 introduced new definitions for and extended certain rights to these relationships.

Civil Partners

The Act defines a civil partnership as a relationship between two individuals of the same sex, neither of whom are married or in an existing civil partnership or under the age of 18.

The legislation amended the Succession Act 1965 to give a registered civil partner somewhat similar rights to those of a legal spouse on death, subject to the financial needs of any children being met. See Appendix II Succession Act for further details.

As a follow on from this change the spouse exemption from CAT was also extended to civil partners in the Finance (No. 3) Act 2011.

Cohabitants

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

A qualified cohabitant is defined as an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period of two years or more, in the case where they are the parents of one or more dependant children, and of 5 years or more in any case.

It is worth noting that neither the Succession Act rights nor the CAT exemption extended to civil partners were extended to cohabitants. So while a qualified cohabitant may apply for provision out of their deceased cohabitants estate, they are only entitled to an amount after any spouse

and civil partners rights have been satisfied and any inheritances or gifts they do receive from their 'cohabitant' will be subject to CAT.

This means that one cohabitant inheriting from the other would be entitled only to the "strangers" threshold of €15,075 (May 2015).

Agricultural Relief

In addition to the relief available on the value of farmland, buildings and stock, agricultural relief can be claimed where a gift of, say, cash from an investment based estate is gifted to a qualifying 'farmer' on the basis that the asset received is converted to qualifying agricultural property within two years of the date of the gift or inheritance. What this means in effect is that the asset gifted does not have to be agricultural property but once the gift is made subject to it being converted to qualifying agricultural property, the relief can still be claimed on the gift or inheritance where the recipient is a qualifying farmer.

Business Relief

There are also some additional points worth mentioning in connection with Business Relief.

Firstly, the relief will only apply to 'qualifying business assets'. In the case of a partnership or sole trader, that is assets which are used in the course of a qualifying business activity. Where the value of a business includes some exempted assets, relief will be allowed on the value of the qualifying business assets only.

Let's take an example

| | |
|------------------------------|----------|
| Company value at | €1m |
| Qualifying business assets = | €750,000 |
| Non qualifying assets = | €250,000 |

| | |
|-----------------------------|-----------------------------------|
| Business relief | |
| 90% x €750,000 = | €675,000 balance is taxable i.e. |
| €750,000 - €675,000 | €75,000 qualifying assets taxable |
| Taxable value of Business = | €75,000 + €250,000 = €325,000 |

Also worth noting is the fact that the relief can also be extended to certain assets owned personally by the disponent which were used in the course of the business where those assets are also the subject of a gift or inheritance to the same beneficiary at the same time as the 'relevant' business assets.

Family Home Relief

The Finance Act 2000 introduced a complete exemption from Inheritance and Gift Tax on the value of "a dwelling", provided the person inheriting the property satisfied certain conditions. Broadly that the dwelling was, and continues to be, their home. This is commonly referred to as 'family home relief'.

To qualify for the exemption the person who inherits the house must:

- have occupied the house as his/her sole or main dwelling for three years prior to the date of the gift or inheritance,
- at the date of the gift or inheritance not hold an interest in any other dwelling house,
- continue to occupy the house as his/her sole or main residence for 6 years after the date of the gift or inheritance.

Thus the family home may be exempt from Inheritance Tax if the person who inherits it has lived in the house for 3 years before they inherit it, and they continue to live there for 6 years afterwards. In addition, at the time they receive the inheritance they must not own any other "residential property" - even owning a share in another property means this relief will not apply.

The relief is not restricted to parent / child relationship. It is available between any two individuals, for example, elderly brothers and sisters living together or cohabiting couples.

Because of the reference to "family home" this relief is often misunderstood.

Let's take an example ...

Philip and June are married. They have made a Will leaving everything to each other. When both Philip and June die everything will pass to their daughter, Mary, who lives with them. As well as the home (their most valuable asset) they own a holiday cottage in Kerry, plus some savings and personal property.

Philip and June believe that Mary will not have to pay much Inheritance Tax, as they know the family home will not be liable to tax.

This is not correct. Mary could have to pay Inheritance Tax on the family home as she will also become the owner of another "residential property" (the cottage in Kerry).

This relief can benefit children who are living at home, provided the only residential property involved is the family home!

Your client might think that their 'partner' will not have an Inheritance Tax liability on their death as the Family Home Exemption will apply to the value of the house they live in togetherbut what if it doesn't ?

Let's take an example ...

John and Mary buy a house together, and own it in joint names. They are not married. They both contribute equally to the deposit, the mortgage repayment and the joint life mortgage protection plan.

John dies in the first year of the mortgage (house valued at €500,000) and Mary inherits 50% of property (assuming property held as joint tenants). The mortgage is cleared by the mortgage protection plan.

Mary's Inheritance Tax bill is calculated as follows:

€250,000 (50% of the property) less Group 3 Threshold of €15,075 = €234,925 taxed at 33% = €77,525.

It is important to note that if Mary had not made any contribution to the purchase of the house and the mortgage, then she would be treated as if she had inherited 100% of the house and she would be faced with a tax bill of €160,025.

LIFE ASSURANCE

TAX LIABILITIES - PROVIDING FOR THE TAX LIABILITY

As we have already stated Inheritance Tax is due and payable at certain payment dates. Unpaid tax attracts interest which is not tax deductible. Therefore if no advance provision is made for Inheritance Tax, then the beneficiaries of the inheritance will have to either:

- Sell part of their inheritance, or
- Borrow money to pay Inheritance Tax.

MAKE ADVANCE PROVISION

The solution lies in effecting a life assurance plan with a sum assured equal to the value of the beneficiaries estimated Inheritance Tax liability with the people who will receive the assets of the estate being the nominated beneficiaries of the plan.

LIFE ASSURANCE RELIEF – SECTION 72 CAT CONSOLIDATION ACT 2003

To encourage people to plan ahead, and to have cash available to pay Inheritance Tax when they die, relief is available on certain life assurance plans. This relief was introduced by Section 60, of the 1985 Finance Act to allow people to plan for the payment in a tax efficient manner. The legislation is now contained in Section 72 of the CAT Consolidation Act 2003.

The Relief provides that where a life assurance plan is put in place to provide for the payment of Inheritance Tax, Revenue will not seek to tax the plan proceeds to the extent that the money is used to pay Inheritance Tax arising on the death of the lives assured under the plan,

provided certain conditions are met. A plan effected under Section 72 CAT Consolidation Act, 2003 effectively gives your client an option. Rather than letting tax legislation decide how their estate will be distributed – they can pass on their assets in the way they wish - and plan for the tax consequences.

TAX PAYABLE ON THE INHERITANCE OF AN ARF

The Section 72 relief referred to above was extended by Finance Act 2005 to cover the 30% tax liability on ARF monies inherited by a child over 21.

Let's take an example

John is retired and a widower, on his death his entire estate will go to his only daughter Patricia aged 30.

Patricia's estimated Inheritance Tax liability is €500,000.

John has an ARF fund currently valued at €1m. Tax at a rate of 30% will be deducted from the ARF by Qualified Fund Manager (QFM) on John's death, and the balance paid to Patricia.

John effects a Section 72 plan with cover of €800,000, in trust for Patricia.

- €500,000 exempt assuming = Inheritance Tax bill.
- €300,000 is exempt in Patricia's hands as it is equivalent to the tax deducted from the ARF.

QFM will pay net ARF funds €700,000 to Patricia.

ARRANGING THE 'SECTION 72' PLAN

We would recommend that the Section 72 plan be arranged under Trust. The advantages of this are:

- It ensures that the plan proceeds are used only, in the first instance, to pay Inheritance Tax. Any surplus may revert to next of kin.
- The proceeds will be paid immediately on death to the nominated Trustee. The proceeds would not go into the estate.
- The Trust gives flexibility in determining which beneficiaries are to benefit from the plan, and in what proportions.

The plan can be arranged under Trust by completing a Trust form along with the life assurance application.

BENEFITS OF LIFE ASSURANCE RELIEF

The benefit of using a 'qualifying' life assurance plan to fund for the payment of Inheritance Tax is that, as long as certain conditions are met, the proceeds of the plan when used to pay Inheritance Tax, will not increase the beneficiaries Inheritance Tax liability. Whereas, if the money was left in a bank account, for example, this money will be seen by Revenue as an additional inheritance and will increase the tax bill.

For example.

| | Bank account proceeds | "Special" Section 72 plan |
|-------------------|-----------------------|---------------------------|
| Value Accumulated | €100,000 | €100,000 |
| Tax Payable | €33,000 | Nil* |
| Left to pay tax | €67,000 | €100,000 |

* If this plan is used to pay the relevant Inheritance Tax arising on the death of the life (or lives) assured under the life assurance plan, Inheritance Tax will not be payable on the plan proceeds.

APPENDIX I MAKING A VALID WILL

The Succession Act covers some of the requirements for making a Will.

1. A Will can be made by any person over age 18 or who is married and is of "sound disposing mind".
2. A Will must be "in writing", which can include printed or typed Wills.
3. The Will must be signed by the testator i.e. the person making the Will, in the presence of each of two or more witnesses present at the same time.
4. The witnesses are only testifying to the signature of the testator. They do not have to read the Will, nor is it necessary for them to know what is contained in the Will. It is important to note that a witness or any spouse of a witness cannot benefit under the Will.
5. While an individual can draft his will in any way he wants he should bear in mind that the Succession Act of 1965 does give certain rights to an individual's spouse, civil partner and children in certain circumstances, regardless of the terms of the Will. An outline of entitlements of spouse, civil partner and children under the Succession Act follows in Appendix II.

Revoking a Will

An individual's circumstances can change over time. A Will made a number of years ago may not take account of the fact that the individual is now married, has more children or indeed has some grandchildren whom he wishes to include. It is therefore not only important to make a Will, it is vital to review it from time to time.

A Will can be revoked in a number of ways:

1. By making another Will. It is standard practice to insert a clause in a Will to say that this Will revokes all previous Wills. If, therefore, an individual makes a new Will and signs it, this will automatically cancel any previous Will.
2. A Will made when single is automatically revoked if the individual subsequently marries.
3. By the destruction of the Will. The Succession Act provides that a Will is automatically revoked "by burning, tearing or destruction of it by the testator, or by someone in his presence and by his direction with the intention of revoking it."

APPENDIX II

SUCCESSION ACT

When a person dies all their property devolves to their "personal representatives" to transfer to the individual's successors. The way property is transferred will depend on whether or not the deceased had made a Will. If there is a valid Will the personal representatives "the executors" distribute the assets in accordance with the terms of the Will. If there is no Will the individual is said to have died "intestate" and the property is distributed by the personal representatives "administrators" in accordance with the provisions of the Succession Act 1965.

The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

NO Will - where a person dies "intestate"

| | |
|---|---|
| Spouse or civil partner and no children : | Spouse or civil partner entitled to full estate. |
| Spouse or civil partner and children | Spouse or civil partner gets 2/3rds. Civil partners entitlement is subject to the financial needs of any children being met 1/3 equally between children. |
| No spouse or civil partner but children: | Estate is divided equally between children. |
| No spouse or civil partner and no children: | Parent(s) if living, otherwise brothers/sisters |

Where an individual dies "intestate" leaving neither spouse, civil partner nor children, his assets will pass to his parents, if his parents are deceased to his brothers and sisters, otherwise to wider family - the Act provides a hierarchical list.

Will - a "testate" death (Entitlement regardless of provisions of will)

| | |
|---|--|
| Spouse or civil partner and no children : | Spouse or civil partner entitled to 1/2 of estate. |
| Spouse or civil partner and children | Spouse or civil partner entitled to 1/3 of estate. Civil partners entitlement is subject to the financial needs of any children being met as directed by the courts. |

An individual can make a Will any way he wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the Will provides.

Children do not have a right to a particular share of the estate under a Will. However, Section 117 of the Act gives a child the right to apply to the Court for a share of the estate under a Will if in the Court's opinion "the testator has failed in his moral duty to make proper provision for the child in accordance with his means."

It is worth mentioning that while this right of the child to apply to the Courts will not effect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

APPENDIX III

FAMILY HOME RELIEF

The value of a "dwelling house" taken on or after 1st December 1999 may be exempt from Gift and Inheritance Tax, in the hands of the beneficiary provided he or she satisfies certain qualifying conditions.

"Dwelling House", for the purpose of this relief, means a building or part of a building with up to one acre of land that was used or was suitable for use as a dwelling.

To obtain the exemption the beneficiary must satisfy all the following conditions:

- a) He or she must have occupied the dwelling house as his or her only or main residence continuously throughout the 3 year period immediately prior to the date of the gift or inheritance*,

In relation to a gift only, any period in the 3 year period prior to the date of the gift, during which a beneficiary occupied a house that was, at that time, the donor's only or main residence, will not be treated as a period of occupation, unless the donor lived with the beneficiary by reason of old age, and is dependant on the beneficiary for services.



In relation to a gift only the 'other property' and the property comprised in the gift, must both have been owned by the donor during the 3 year period prior to the gift.



** The exemption will not be withdrawn where condition c) is breached in the following circumstances:

- i. as a result of the beneficiary requiring long term medical care in a hospital, nursing home or convalescent home, or
- ii. where the beneficiary does not occupy the house as a result of working abroad, or
- iii. where the beneficiary was aged 55 at the date of the gift or inheritance, or
- iv. where the house is sold, if the beneficiary reinvests the proceeds in another dwelling house.

- b) He or she must not be beneficially entitled to any interest in any other dwelling house at the date of the gift or inheritance,
- c) He or she must continue to both own and occupy the dwelling house as his or her only or main residence throughout the period of 6 years following the date of the gift or inheritance**.

*where the dwelling house directly or indirectly replaced other property, the 3 year period in condition a) will be satisfied if the beneficiary occupied both properties for a total of 3 of the 4 years prior to the date of the gift or inheritance.

APPENDIX IV BUSINESS RELIEF

For gifts and inheritances taken on or after 23rd January 1997 the taxable value of "relevant business" property is reduced by 90%.

Company Shares:

The definition of "relevant business property" includes unquoted shares and securities of Irish incorporated companies subject to certain conditions.

The company

The company's business must not consist wholly or mainly of any of the following excluded activities -

dealing in currencies, securities, stocks or shares, land or buildings, or making or holding of investments.

The beneficiary

For the relief to apply the beneficiary must meet one of the following ownership/control tests:

- i) The shares themselves or together with other shares in the company held in the absolute beneficial ownership of the beneficiary, give the beneficiary control of 25% of the voting power over all matters relating to the company,
Or
- ii) The beneficiary controls the company or the company is controlled by the beneficiary and his relatives*,
Or
- iii) The beneficiary holds at least 10% of the issued capital of the company and has worked full time in the company for 5 years prior to the gift/inheritance.

* Relatives of a person include his spouse or civil partner, his children or the children of his civil partner, mother, father, aunt/uncle and any children, grandchildren of any of the foregoing. In addition all spouses or civil partners of relatives are included for the purposes of determining control.

Control includes - having over 50% of the voting power, or owning more than 50% of the shares or being in a position to control the board of directors.

Business Relief - unincorporated business.

Relevant business property also includes property consisting of a business (Sole trader) or an interest in a business (share in a partnership). A business which is wholly or mainly concerned with dealing in land, shares, securities or currencies or the making or holding of investments is excluded.

The relief will apply where the business or part of the business is transferred and not simply where an asset that had been part of the business is subject to CAT.

General

So far we have concentrated on the conditions that apply to the business and the beneficiary in order to qualify for Business Relief. There are some other general conditions worth noting:

Disponer

The property must have been owned by the disponer for a period of 5 years prior to a gift or 2 years in the case of an inheritance.

Clawback of Relief

If within 6 years of the gift or the inheritance of business property:

- the business ceases to qualify, or
- the property is sold or compulsorily acquired and not replaced within one year with other business property the entire relief will be clawed back.

APPENDIX V

AGRICULTURAL RELIEF

This relief is given in respect of certain agricultural property taken by a "farmer". The relief reduces the market value of the agricultural property by 90% for gifts and inheritances taken on or after 23rd January 1997.

The market value of the agricultural property as so reduced is then termed "agricultural value" in the Act and is substituted for market value in the calculation of tax.

There are certain conditions attaching to this relief:

1. The relief only applies to "agricultural property" which is defined as "agricultural land, pasture and woodlands situated within a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with lands occupied therewith) as are of a character appropriate to the property." The relief also applies to stock and farm machinery.
2. Any milk quota attaching to lands will also qualify for reduction as part of the market value of the lands.
3. The relief only applies to agricultural property acquired by an individual, domiciled in the State, who after taking the agricultural gift or inheritance not less than 80% of his gross assets are represented by the value of agricultural property, including livestock, bloodstock and farm machinery. For gifts or inheritances taken on or after 1st February 2007 a donee is allowed to offset borrowings for the purchase, repair or improvement of an off farm principal private residence against the value of the property for the purpose of the 80% test.
4. For gifts or inheritances received after 1st January 2015 the beneficiary must have
 - a. a relevant agricultural qualification or attain such a qualification within four years of the date of the gift or inheritance, and must farm the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit, or
 - b. the beneficiary must spend not less than 50% of their normal working time farming the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit .Normal working time approximates to 40 hours per week.

Where the beneficiary leases the agricultural property the individual to whom the property is leased must satisfy either condition a. or b. above.

The relief is withdrawn in certain circumstances :

If within 6 years of the 'valuation date' the beneficiary ceases to qualify as a farmer as outlined and does not lease the land to a lessee who will farm the land for the remainder of the 6 year period. Or if within six years after the date of the gift or the inheritance lands are sold or compulsorily acquired in the lifetime of the donee or successor, and the agricultural property is not replaced within a year following a sale, or within 6 years following a compulsory acquisition where the land was compulsorily acquired on or after 25th March 2002.

If the gift or inheritance consists of development land and is disposed of in the period commencing 6 years after the date of the gift / inheritance and ending 10 years after the date there will be a partial claw back of the relief.

APPENDIX VI

SOME EXAMPLES - FOR ILLUSTRATION PURPOSES ONLY.

Example 1 - Assuming no reliefs apply

Estate valued at €1,500,000

3 beneficiaries are the client's children each to receive 33% of the estate.

Tax Liability

The taxable value of the estate is €1,500,000, which gives each child a taxable inheritance of €500,000 on which tax is charged as follows:

| Inheritance Tax | | |
|-----------------|----------------------|---------|
| First | €225,000* @ nil rate | Nil |
| Balance | €275,000 @ 33% | €90,750 |
| Total | €500,000 | €90,750 |

* i.e. Group 1 threshold available from 6th December 2012.

Therefore each child would have an estimated Inheritance Tax Liability of €90,750 giving a total Inheritance Tax Liability of 3 x €90,750 which is €272,250.

So the total Inheritance Tax liability amounts to €272,250

The above assumes: Full thresholds are available to the three children. The three children have not received any gifts or inheritances from their parents since 5th December 1991. No Reliefs (Business / Agricultural / Dwelling Home) will apply to the value of any of the assets in the estate.

This example is for illustration purposes only.

Example 2 - Assuming Business Relief applies

Estate valued at €2,500,000 consisting of

Family Home €500,000

Business Assets €1,500,000

Savings / Investments €500,000

2 beneficiaries are the client's children each to receive 50% of the estate.

Tax Liability

The taxable value of business property is reduced by 90%, assuming business relief applies. This reduces the taxable value of this property to €150,000. With other assets valued at €1,000,000, the total taxable value of the inheritance is €1,150,000, which gives each child a taxable inheritance of €575,000 on which tax is charged as follows:

| Inheritance Tax | | |
|-----------------|----------------------|----------|
| First | €225,000* @ nil rate | Nil |
| Balance | €350,000 @ 33% | €115,500 |
| Total | €575,000 | €115,500 |

* i.e. Group 1 threshold available from 6th December 2012.

Therefore each child would have an estimated Inheritance Tax Liability of €115,500 giving a total Inheritance Tax Liability of 2 x €115,500 which is €231,000.

So the total Inheritance Tax liability amounts to €231,000.

The above assumes: Full thresholds are available to both children. Both children have not received any gifts or inheritances from their parents since 5th December 1991. Dwelling Home Relief will not apply to the value of the Family Home. Business Relief applies to the total value of the business assets.

This example is for illustration purposes only.

Example 3 - Examples to show the benefit of Family Home Relief

| | |
|---|----------|
| Estate valued at €1,000,000 consisting of | |
| Family Home | €500,000 |
| Family Protection / | |
| Life Assurance | €250,000 |
| Savings / Investments | €250,000 |

Assuming estate passes to one child the Inheritance Tax Bill is calculated as follows:

3.a. Assuming the child still lives at home and Family Home Relief applies

If Family Home Relief applies the value of the family home is not taken into account when calculating the child's tax liability. This reduces the taxable value of the child's inheritance to €500,000 on which tax is charged as follows:

| Inheritance Tax | | |
|-----------------|----------------------|---------|
| First | €225,000* @ nil rate | Nil |
| Balance | €275,000 @ 33% | €90,750 |
| Total | €500,000 | €90,750 |

* i.e. Group 1 threshold available from 6th December 2012.

3.b. Assuming the child lives in a dwelling house he / she purchased themselves and Family Home Relief does not apply

If Family Home Relief does not apply to the value of the Family Home, then this amount must be taken into account when calculating the client's entire estate. This gives the child a taxable inheritance of €1,000,000 on which tax is charged as follows:

| Inheritance Tax | | |
|-----------------|----------------------|----------|
| First | €225,000* @ nil rate | Nil |
| Balance | €775,000 @ 33% | €255,750 |
| Total | €1,000,000 | €255,750 |

*i.e. Group 1 threshold available from 6th December 2012.

The above assumes: The full Group 1 threshold is available to the child. The child has not received any gifts or inheritances from anyone else since 5th December 1991.

This example is for illustration purposes only.

Example 4 - Non Married Couples

Mary and John have been living together for 10 years. They have never married. John dies and his assets pass, through his Will, to Mary.

| | |
|---------------------------------------|----------|
| His assets are valued at | €790,000 |
| His share of the Family Home | €250,000 |
| His Pension Death in Service Benefits | €240,000 |
| Holiday Home in Cork | €250,000 |
| Savings / Investments | €50,000 |

Tax Liability

The total taxable value of Mary's inheritance is €790,000 on which tax is charged as follows:

| Inheritance Tax | | |
|-----------------|---------------------|----------|
| First | €15,075* @ nil rate | Nil |
| Balance | €774,925 @ 33% | €255,725 |
| Total | €790,000 | €255,725 |

* i.e. Group 3 threshold available from 6th December 2012.

Therefore Mary's Inheritance Tax Liability is €255,725.

The above assumes: The full Group 3 threshold is available to Mary. Mary has not received any gifts or inheritances from anyone else since 5th

December 1991. **Dwelling Home Relief will not apply to the value of the Family Home – this is because Mary is now the owner of other 'residential property' being the holiday home in Cork.**

This example is for illustration purposes only.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

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