

MAC COURT
Financial Planning Ltd

A Guide To Personal Estate Planning

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August 2005

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1.0 INTRODUCTION

“Estate planning” in the past was considered only for the elite, the very few wealthy individuals and their families in our society. With the phenomenal growth in the Irish economy, (in enterprise, property and equity investments) a change has emerged with more and more people who previously did not have to give consideration to this area now needing to do so.

1.1 Background

Capital Acquisitions Tax (CAT) is levied on the recipient of gifts and inheritances. CAT comprises two separate taxes:

- Gift Tax payable on lifetime transfers
- Inheritance Tax payable on inheritances received on death.

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

1.2 Who is liable to CAT in Ireland?

Although the beneficiary of the estate is primarily liable for the payment of Inheritance Tax, whether or not a charge to tax arises is dependent on whether the disponent or the beneficiary is resident or ordinarily resident in the state at the date of the gift or inheritance. If the disponent (the deceased person who is “providing the inheritance”) or the beneficiary (the person receiving the gift or inheritance) is resident or ordinarily resident in Ireland, then the entire estate will be liable to Inheritance Tax here.

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

1.3 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 you would like and what is practical in your particular family or business circumstances. So we start with the facts and your intentions, and then look to minimising any problems and plan for any tax impacts that cannot be overcome.

1.4 Wishes

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

You may have a good idea of what you wish to happen, but has this been legally copper fastened, have you made a Will?

1.5 Impact – where we come in....

Once you have some idea of what you have and what you intend to do we can analyse the impact from a taxation and legal perspective. We can then advise on possible options that may be more effective or efficient from a tax or legal viewpoint.

With the above in mind this document is intended to give you a broad overview of the main taxation and legal issues to be considered when putting together your wish list.

A Cautionary Note:

The above is intended to give a broad outline of some on the issues to consider in Personal Estate Planning, MacCourt Financial Planning Ltd. cannot accept responsibility for the consequences of any actions taken on the basis of this information. In all cases clients should consult their own professional taxation advisors.

2.0 MAKING A WILL

2.1 Succession to Property

When a person dies all his property devolves to his “personal representatives”.

The personal representatives then transfer ownership of the property to the individual’s successors. However the way that property will be transferred will depend on whether the individual has made a Will or not.

If there is a valid Will then the personal representatives will 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 would be distributed in accordance with the provisions of the Succession Act 1965.

2.2 Why make a Will?

There are many good reasons

- A Will ensures that the estate will be divided according to the individual’s wishes and not as the Succession Act dictates.
- Generally speaking there is less delay and dispute where an individual dies and leaves a Will than where no Will exists.
- 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 children and the spouse exemption from inheritance tax.
- The exercise involves a useful financial review. It highlights just how financially prepared one’s family would be in the event of unexpected death.
- 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.

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

3.0 CAPITAL ACQUISITIONS TAX

3.1 CAT

Tax is calculated according to the total of all gifts and inheritances received from all sources since 5th December 1991. The following CAT Tax Table currently applies:

Benefits received since 1/1/02	Tax Rate
Group Threshold	NIL
Balance	20%

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

The Group thresholds from 1/1/05 are:

- | | |
|---------------------------|--|
| Group 1 - €466,725 | Where the person receiving the property is a child or a minor child of a deceased child of the disponent. |
| Group 2 - € 46,673 | Where the person receiving the property is a lineal ancestor or descendant, a brother, sister, or child of a brother or sister of the disponent. |
| Group 3 - € 23,336 | All other cases. |

The threshold amounts will be adjusted for inflation each year.

3.2 Aggregation

The Finance Bill 2000 announced a change in the **aggregation** rules so that in future only gifts and inheritances received by the same beneficiary since 5th December 1991 **under the same group** will be aggregated.

This means that all benefits from Group 1 will be added together with an overall threshold of €466,725. Benefits from Group 2 members (brother/sister/grandparent etc) will be added together for the purpose of the €46,673 threshold and benefits from Group 3 members (strangers) for the purpose of the €23,336 threshold.

So in effect a beneficiary can potentially receive up to €36,734 tax-free if the benefits come through different "groups".

3.3 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. 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 house e.g. contents, jewellery etc.

3.4 Reliefs

The most important relief is the spouse exemption which was introduced in the **1985 Finance Act**, which also introduced an **exemption on the proceeds of certain life assurance policies** to encourage people to plan for the payment of tax.

Additional reliefs and exemptions have been introduced over the years primarily to encourage private enterprise and to avoid the forced sale of a family farm or business and indeed the family home in certain circumstances:

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

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

Family Home – This exemption will apply in relation to Gift and Inheritance Tax to the value of a “dwelling” with up to an acre of land where the beneficiary:

- *Has occupied the house as his sole or main dwelling for three years prior to the date of the gift or inheritance*
- *At the date of the gift or inheritance does not hold an interest in any other dwelling house*
- *Continues to occupy the house as his sole or main residence for 6 years after the date of the gift of inheritance*

The requirement to hold the property for 6 years does not apply where the beneficiary is age 55 or over at the date of the gift or inheritance.

3.5 Spouse Exemption...beware

Gifts or inheritances received by one spouse from the other are totally exempt from CAT.

The term "common-law" spouse is used to describe a relationship where the couple involved are not legally married to each other. This could arise where, for example, both partners are single or where one or both partners are already legally married, but not to each other.

The CAT implications of such a relationship are that the partners involved are not recognised as being legally married to each other and hence do not qualify for the spouse exemption for Capital Acquisitions Tax purposes. This means that one partner inheriting from the other would be entitled only to the "strangers" threshold of €20,112. Such "common-law" spouses do not have Succession Act rights to each other's estates.

3.6 Payment of Tax

Inheritance Tax is generally payable within four months of the valuation date. Where assets are passing under a Will or intestacy the valuation date is generally the date of the grant of representation (Probate or Administration). Where assets pass outside the estate it will normally be the date of death.

Unpaid tax attracts interest at a rate of 1 % per month simple interest, which is equivalent to a compound rate of 12% per annum.

3.7 Section 60 Relief

Relief was introduced by S.60, of the 1985 Finance Act to allow people to plan for the payment in a tax efficient manner.

Where a life assurance policy is put in place to provide for the tax, the Revenue will not seek to tax the policy proceeds to the extent that the money is used to pay

Inheritance Tax arising on the death of the lives assured under the policy, provided certain conditions are met. A Section 60 policy effectively gives you an option – rather than letting tax legislation decide how your estate will be distributed – you can pass on your assets in the way you wish - and plan for the tax consequences.

Appendix 1.

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 and children in certain circumstances, regardless of the terms of the Will. An outline of entitlements of spouse and children under the Succession Act is attached.

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.”

SUCCESSION ACT 1965
(Rights of surviving spouse &/or children.)

NO Will Where a person dies intestate:	
Spouse and no issue	Spouse entitled to full estate.
Spouse and children	Spouse gets 2/3rds 1/3 equally between children
No spouse but children	Estate is divided equally between children.
No spouse & no children	Parent(s) if living, otherwise brothers/sisters

Will -a testate death	rights regardless of provisions of will.
Surviving Spouse No children	Spouse Entitled to 1/2 of estate.
Spouse & Children	Spouse entitled to 1/3 of estate.

Children do not have a specific legal entitlement where there is a Will.

An individual can make a Will any way he wants. However Section 11 of the Succession Act gives a surviving spouse certain legal rights. The surviving spouse is entitled under the succession act to require that the family home be appropriated in satisfaction of part or all of this right.

The spouse must elect to claim his or her right. The personal representatives must notify the spouse in writing of his or her rights. The rights must be exercised within 6 months of receiving the notification or within one year of the date of the granting of probate, if later.

Children do not have a right to a particular share of the estate under a Will. 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.*"

If the Court forms such an opinion they may order provision to be made out of the estate as the Court thinks fit.

The Court is obliged to consider the application "*from the point of view of a prudent parent, taking into account the position of each of the children of the testator and any other circumstances the Court consider of assistance in arriving at a decision that would be fair to the child in question and any other children*"

Appendix II

Agricultural Relief

This is a special relief given in respect of certain agricultural property taken by a full-time farmer. The relief is given by reducing 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 this 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 the 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**, where 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.**
- 4) The relief is withdrawn in certain circumstances :
 - a) 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 so replaced within a year of the disposal by other agricultural property.
OR
 - b) the donee/successor becomes non-resident in any of the three tax years following the valuation date for the gift or inheritance.

If any of a) or b) above is breached within 6 years of the gift or inheritance the entire relief is clawed back.

Appendix III

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 must not carry on its business wholly or mainly outside Ireland, **and**, 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 the 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 mattering 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 or inheritance.

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

Control includes - having over 50% of the voting power, or owing 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 or a business (sole trader) or an interest in a business (share in a partnership) which is operated for profit wholly or mainly in the state. A business which is wholly or mainly concerned with *dealing in land, share, securities or currencies or 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 inheritance

- a) the business ceases to qualify, or
- b) if the property is sold or compulsory acquired and not replaced within one year with other business property,

the entire relief will be clawed back.

Acknowledgement:

This guide has been produced with the kind help of Irish Life's Technical Services Dept.

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August 2005.