

Guideline notes to assist parents in deciding upon a fair and balanced split on their estate when writing a will.

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From time to time I have been requested to provide assistance to clients when deciding on the fairest means of distributing an estate / writing a will. In a recent case we put some thoughts and suggestions on paper for a specific client. These ideas are repeated here and may be of interest in your own circumstances. They are not intended to be a comprehensive recommendation but instead are more 'food for thought'.

Some possible ideas include:

1. Establish a clear record on paper of assets and liabilities. Our CFAR report may be used for this purpose.
2. Have a family meeting to discuss the matter. Tell the children what your concerns are, if any. Ask them to openly discuss any concerns at the meeting but not to come to any definite conclusions. Giving a broad outline of your estate and it's worth can be considered, but you may wish to keep some or all of the figures confidential at this stage.

Invite the family to go away, think about what has been said (maybe discuss it with their spouses / partners) and come back for a further meeting after they have had an opportunity to think about the issue for a while. Get their considered (and possibly revised) thoughts on the matter. Note what they have to say, but do not reach any conclusions at that meeting. Decisions, if any, should be a matter for both parents, privately, afterwards.

When a decision has been made, obviously wills should be updated as soon as possible and you can choose then if you wish to relate any decisions made to your children.

3. In general, assets within a business are not ranked for the same value as say cash assets outside the business, however there are exceptions where a business is producing exceptional profits from a relatively low asset base. If business relief is available, it should be borne in mind that the children inheriting the business may have a lot less tax to pay than those children inheriting assets outside the business.
4. You may decide to gift your estate / leave by inheritance in equal shares across all of your children. This may not be good for the business if there are children not involved in running it. A minority share in a private company not producing dividends can be of limited financial value for those not working in the business. It may also spread the decision making across family members not experienced in the running of the business / without the necessary drive to make it succeed. The inheritance or non-inheritance of the business could also be raised as an issue at the family meeting. Sometimes parents are surprised that children may prefer to inherit cash or other assets rather than a share in the business which may have a lesser sentimental value to those working outside the business. The only way to find out is to ask.
5. One of the issues frequently raised is the family / holiday home(s) which may not be divisible equally across all the children, but may have significant sentimental value. Some of the options on leaving these in your will include:
 - a. letting each beneficiary of your will 'bid' the highest value to achieve their share of the property using their share in the overall estate, i.e. reducing other inheritances proportionately if getting a higher % of the holiday homes.
 - b. If one or more of the children are wealthy in their own right, they may be able to afford to 'outbid' their siblings, and your will could compensate them by providing them with a higher % of the estate on death to leave them on 'a level playing field' in this regard.

- c. You could give first choice to one or more children to allow them take their pick of the assets on death. Any decision in this area should take into account the thoughts and comments from the family meeting.
- d. In general, it may not be a good idea to leave one specific holiday or family property shared across several children unless you are satisfied that they will work well together in the day to day running and use of the property after your deaths. You could test this issue by letting the children run a holiday property as their own during your lifetime and see how they get on. Wills can always be revised in your lifetimes.
- e. Your will could create a 'discretionary will trust' for some or all of your assets on death. This process would delay the final transfer of assets to the beneficiaries of your estate. In general, this may not be a good idea for adult children due to the additional complication of running the trust after your deaths and also, particularly, the tax implications for assets transferred into a discretionary trust on death (special discretionary trust taxes on creation of the trust and on an annual basis for adult children).

Values may rise while assets are held in the trust, increasing any inheritance tax liability further. A discretionary will trust is however a useful means of controlling asset distribution for a period after death, particularly if minor children are involved or if one or more children might not be mature enough to deal with inheriting a large amount of money /assets. Other situations that might suit the use of a discretionary will trust are where a child (adult or minor) has a difficulty with drink, drugs or gambling or where their marriage might be in difficulty.

- 6. Certain tax exemptions may apply for children inheriting the family home where they are resident at the time of death and do not own any other residential property in their own / joint names.
- 7. An annual gift tax exemption of €3,000 is available so small gifts can be made during your lifetime which do not use up the inheritance tax exemption thresholds.
- 8. Inheritance Tax / gift tax exemptions are presently (Jan 2004) as follows:

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| a. | Children | €156,438 |
| b. | Ancestor / descendant (includes grandchildren) | €45,644 |
| c. | 'Strangers' | €22,822 |

Any excess is taxable at the 20% Capital Acquisitions Tax rate.

- 9. Gifts / inheritances received since 5/12/1991 are taken into account when determining thresholds.

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August 2004

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