A little planning makes a big difference

Scope of this guide

This guide considers the issues facing anyone who will eventually pass wealth to the next generation in Ireland. It explains the basics behind inheritance tax, its administration and how to calculate a liability. It identifies the varying reliefs and exemptions available and considers a number of planning strategies you may use in preparing for the future. This guide does not purport to be an exhaustive or technical authority on the subject but rather an accessible resource for those who will one day leave something behind.

For the purpose of this guide, we assume that both the person passing on their wealth and the person receiving it reside in Ireland and that the assets in question are situated in Ireland. If you are unsure as to your status in this regard you can read more at http://www.revenue.ie/en/tax/it/residence.html

At SMP we focus on the financial planning aspect of inheritance planning. It may be necessary to also take specific tax and legal advice especially when complicated circumstances present or in the case of large estates.

Whilst we have taken great care in the preparation of this guide, it does not in itself constitute financial or tax advice and should not be construed to do so. We strongly recommend taking professional advice in planning for your future and that of your family. We are happy to assist and where appropriate will do so in association with other qualified and experience tax and legal professionals.

Notice

This guide is for guidance purposes only and does not constitute advice. We recommend that you seek professional tax, legal and financial advice as appropriate in making important financial decisions.

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What is Inheritance Tax?

Inheritance tax is payable on nearly all assets such as property, shares and pension assets transferred upon death. Inheritance Tax along with Gift Tax and Discretionary Trust Tax is a form of Capital Acquisitions Tax, otherwise known as CAT.

Inheritance Tax Rate

33%

Levied on sums received over the prescribed thresholds after all other exemptions and reliefs have been taken into consideration. Treatment of ARF pensions should be considered separately (see ARF section of this guide).

Exemption Limits and Relationships

Inheritances and gifts up to certain prescribed limits are exempt from Capital Acquisitions Tax (CAT). The limit of the exemption depends on the relationship between the person giving and the person receiving. These limits are referred to as the "Group Threshold".

Relationship	Limit
Spouse *	Fully exempt
Group A* - Child, minor child of a deceased child	€310,000
Group B - Grandparent, grandchild, brother, sister, niece, nephew, parent**	€32,500
Group C - All other "strangers in blood"	€16,250

*For the purpose of these relationships, Civil Partners are considered as a spouse and a child of a Civil Partner as a child.
**In certain circumstances where a parent is receiving an inheritance from a son or daughter, the Group A threshold of €280,000 may be applied. In the circumstances described in the exemptions section below such an inheritance may be fully exempt.

The first €1,270 received in a given year is exempted from the charge of CGT

Group Threshold limits and the rate at which CAT is levied has varied over time. For historical CAT rates and thresholds see http://www.revenue.ie/en/tax/cat/thresholds.html

Understanding Group Thresholds

The Group Threshold is a lifelong limit which applies to the person receiving a gift or inheritance. In considering the limit for the purpose of inheritance tax, any gifts received since 5th December 1991 must be deducted from the limit. The key point in considering the Group Threshold is that it is applied to the person receiving the inheritance as opposed to the person leaving it. For example, John has an estate of €450,000 which he leaves equally to his two sons. Each son's benefit will be taxed separately so, in calculating one son's liability it is of no relevance what John's other son received.

When planning for the future, understanding limits is critically important. For example, a grandparent may wish to leave a property to a favourite grandchild. This may have the potential to create a considerable CAT liability which would not have arisen had the property been left to a child and gifted on. However, through a little forward planning it may have been possible to create a situation where no liability would have arisen or limit used had the conditions of the Dwelling House Exemption been met. Good planning requires an understanding of the rules.

In considering previous items to be deducted from your group threshold, any amounts received by way of a gift of less than €3,000 may be ignored as they are exempted under the Small Gifts Exemption.

Farm Relief

Farm relief reduces the value of agricultural property for the purpose for inheritance tax by 90%. Agricultural property includes farmlands, woodlands, crops, livestock, farm machinery, farm buildings and a range of other agricultural related items. For a person to be eligible for agricultural relief they must pass "The Farmer Test". This test has nothing to do with green wellies and animal husbandry, but is a strict test of the beneficiary's assets; 80% of their assets must consist of agricultural property after taking the gift or inheritance. For more information visit: http://www.revenue.ie/en/tax/cat/leaflets/cat5.html

Business Relief

Business relief works in a similar manner to farm relief in that the value of the business assets are reduced by 90% for the purpose of calculating the Capital Acquisitions tax liability. For the purpose of this relief, a business is an activity which is carried on for gain so it is not possible to use this exemption to shelter the transfer of say a warehouse unit that is not used for bona fide business purposes. Certain businesses are excluded such as holding companies and companies that deal in currencies, securities, stocks and shares and land. The business must have been owned for 5 years prior by the person passing it on and must be kept by the person receiving it for at least 2 years after receiving it. For more information visit: http://www.revenue.ie/en/tax/cat/leaflets/cat4.html

Favourite Niece or Nephew Relief

Favourite niece or nephew relief allows for a niece or nephew to be treated as a child of the person leaving the inheritance if they have worked "substantially on a full time basis" for the person leaving the gift. This is considered to be 15 hours per week in a small business or 24 hours per week in a larger business where there are other employees. For more information see: http://www.revenue.ie/en/tax/cat/guide/reliefs.html#section1

Pre 1st April 1975 Marriage Settlements

Pre 1st April 1975 Marriage Settlements relief allows that in certain marriage settlements where benefits are taken by grandchildren, these grandchildren may be treated as children for CAT purposes should they meet the following conditions:

- The settlement must have been made prior to 1st April 1975
- The consideration for the settlement was the marriage of the parent to the beneficiary
- The person leaving the settlement is a grandparent of the beneficiary
- The parent or parents of the beneficiary must have been entitled to a limited interest in the settlement property

Exemptions

Dwelling House Exemption - Updated for the Finance Bill 2016

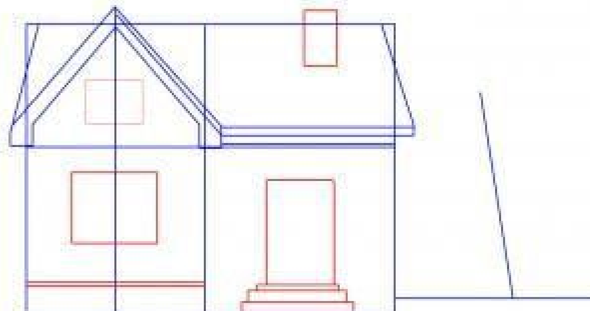
Section 86 of the Capital Acquisitions Tax Consolidation Act 2003 provides that inheritances of a dwelling house taken on or after 25 December 2016 will be exempt from capital acquisitions tax provided the following conditions are satisfied:

1. The donor must have occupied the dwelling house as his/her only or main residence at his/her date of death. This requirement will be relaxed in situations where the deceased person had to leave because of ill health e.g. to live in a nursing home;
2. The beneficiary must have continuously occupied the dwelling house as his/her only or main residence for a period of three years immediately before the date of the inheritance. Where the dwelling house on which the exemption is claimed, replaced another dwelling house within the three year period, this condition will be satisfied where the beneficiary has continuously occupied both houses as his/her only/main residence for a total period of three out of the four years, immediately prior to the date of the inheritance;
3. The beneficiary must not be entitled to an interest in any other dwelling house at the date of the inheritance and
4. The beneficiary must continue to occupy the dwelling house (except where such beneficiary is aged 65 or over) as his/her only or main residence for a period of six years from the date of the inheritance. The exemption will not be withdrawn where the recipient requires long term medical care in a hospital/nursing home/convalescent home or is required by reason of his employment to reside elsewhere.

The exemption also applies to residential properties that are gifted to a dependent relative of the donor. A dependent relative is a direct relative of the donor or of the donor’s spouse or civil partner, who is permanently and totally incapacitated because of physical or mental infirmity from maintaining himself/herself or who is over the age of 65.

In the case of a gift of a dwelling house to a dependent relative, the dwelling house is not required to have been the principal private residence of the donor.

This exemption may apply to gifts as well as inheritances. For more detailed information on this topic, visit Revenue at http://www.revenue.ie/en/tax/cat/leaflets/cat10.html



Life Insurance – Section 72

Section 72 Life Insurance is a life insurance policy used to pay an inheritance tax bill. The policies are set up on a whole of life basis and are hence guaranteed to pay on death. The proceeds of the policy are not themselves subject to the charge of CAT so long as they are used to pay an inheritance tax bill.

Section 72 refers to Section 72 of the Capital Acquisitions Tax Consolidation Act 2003 which provides for the use of the proceeds of a life insurance policies to pay inheritance tax liabilities. These policies can be very efficient and affordable especially when set up earlier in life. Often people only consider Section 72 cover later in life when it may be more difficult to obtain. This is due to a Section 72 policy being a life insurance contract and subject to medical underwriting.

For more detailed information on Section 72 cover and how you might employ it in your planning, see the planning strategies section of this guide.

Heritage Property Relief – Section 78

This relief is divided into two parts:

- Heritage House and Gardens
- Heritage Objects

Heritage property relief allows certain properties, some perhaps of considerable value, to pass without the imposition of CAT from one generation to the next. It also allows for genuinely significant objects such as paintings and antiquities to be passed CAT free so long as they remain in the State and generally accessible.

Whilst bound by onerous restrictions, this relief can be of particular benefit to those with substantial homes or unusual and valuable items such as fine art.

Heritage Property and Gardens

A Heritage House and Garden is one which appears to the Revenue Commissioners to be of national, scientific, historical or artistic interest. The property must also meet the following conditions:

- The property must not be one used for trading purposes
- “Reasonable access” must be given to the public on an ongoing basis
- “Reasonable access” must have been given to the public for 3 years prior to the gift or inheritance

The key term is “reasonable access”. According to Revenue, to meet this standard the following criteria must be met:

- The property must be open for 60 days a year for at least 4 hours a day. Ordinarily, 40 of these days must be between May and September with 10 days being on a Saturday or Sunday.
- The whole, or a substantial portion of the house and gardens must be opened at the same time.
- The admittance price must be reasonable and not used as a barrier to affording the public access to the property.
- Adequate notice of the admittance price and entrance hours must be given to the public.
- Details of the name, address, opening times and admission prices must be notified to Board Fáilte before January 1st each year.

This relief will be clawed back by Revenue if the property is sold or passed on within 6 years of receipt or if the beneficiary dies and the object is not in turn passed on to their spouse or civil partner.

Exemptions

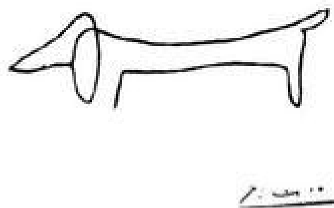
Heritage Objects

A broad range of objects qualify for the relief once Revenue is satisfied that they are of national, scientific, historic or artistic importance. These may include pictures, prints, books, manuscripts, works of art, jewellery, scientific collections or other objects of interest.

There are a number of restrictive conditions, namely:

- The object must be kept in the state with the exception of temporary absences authorised by the Revenue such as a painting being consigned to an overseas exhibition.
- Reasonable access must be given to the public or to other bodies to view the objects
- The object cannot be the subject of trading such as art dealing or other commercial enterprise

As with Heritage House and Gardens, this relief will be clawed back if the object is sold or passed on within six years of receipt or if the beneficiary dies and the object is not in turn passed on to their spouse or civil partner. In the case of heritage objects, the relief may also be clawed back if the object is moved outside of the State or if reasonable access to the public is removed.



Incapacitated Persons Exemption

Where an inheritance is left for the purpose of providing for someone with a physical or mental disability, this will be exempt from CAT. The relief only applies to an inheritance left exclusively for the purpose of meeting "qualifying expenditure". Qualifying expenditure means that associated with the ongoing medical care and maintenance costs associated with the person receiving the benefit.

It is important that the person leaving the inheritance clearly records their intention as to how it is to be used. This should be done formally thereby creating evidence of their wishes.

Charitable Bequests

Many people wish for a portion of their wealth to be used for good once they pass. With this in mind they may consider leaving a charitable bequest. Money left to charities is exempt from CAT thereby ensuring its full value can be put to meeting the charity's objectives.

Providing the charity is properly constituted and recognised, you have substantial freedom to leave money to whatever cause you favour whether it is to be applied in Ireland or overseas.

Inheritance from a Child to a Parent

In the circumstance where a parent has made a non-exempt gift to a child, this being a gift in excess of €3,000, in the previous five years, then any inheritance received by the parent from the child will be fully exempt from CAT.

For example, Paul gives his daughter Mary a gift of €20,000 in 2010 to set up a software business. Mary's business prospers but she dies unexpectedly in 2016 leaving her entire estate valued at €3,000,000 to her father. No CAT is payable.

Other Planning Strategies

Small Gift Exemption

Whilst not strictly an inheritance tax exemption, the Small Gift Exemption should be considered by anyone considering passing wealth efficiently from one generation to the next. This is not only a pragmatic measure which avoids unnecessary burden on the administration of taxation when small transactions occur, but it can also be employed as a powerful planning tool.

The Small Gift Exemption applies to the first €3,000 gifted from any one person to another in a given year and exempts these amounts from CAT. Gifts made within the Small Gifts Exemption threshold do not impact on the lifelong Group Threshold limits. Used over multiple years, the impact of planning using the Small Gift Exemption can have the same effect as if the Group Threshold limits were significantly expanded.

This exemption may not be carried forward and therefore should be, where possible, exhausted annually. For more on using the Small Gift Exemption as a planning measure, see the planning strategies section of this guide.

Site Transfer from a Parent to a Child

Again whilst not strictly an inheritance tax exemption, where circumstances allow, considerable efficiency can be generated where a parent transfers a site to a child. The child must occupy a principle private residence on the site for a period of at least three years for the exemption to hold. If this condition is not met then not only would the child be liable on disposal to pay any gain they make but also the gain their parent would have made had they transferred the site originally. The maximum value of the site is restricted to €500,000 and it must not exceed one acre in size.

The Rules

When it comes to pensions, rules matter.

What happens to your pension when you die will depend on the pension structure you have, whether you are retired, still at work or if your pension relates to a past employment. There is no common set of rules governing how death and pensions relate. Pensions can be unusual in how they are treated for the purposes of inheritance. This means it is not always optimal for pension assets to be passed to a spouse. Particular attention should be given to the treatment of ARF's in this regard.

Unfavourable rules applying to occupational pension structures may create excessive, and in certain cases, avoidable risk. Such issue may present for successful business people, consultants who have operated through company structures and professional managers. It will often be possible to plan around such issues and produce very considerable efficiencies.

When moving employment you will generally have a choice of leaving existing pension assets where they are, moving them to your new employment or investing them in a structure in your own name. When considering how to proceed you should have regard for the impact this will have for inheritance purposes. Generally assets from a previous employment pass to your estate however, should you elect to move them to your new employment they will not and the benefit payable to your estate will be restricted to a multiple of your salary.

Pre-Retirement

Occupational Schemes

Death in Service -

A lump sum of maximum 4 times "final remuneration" will be paid with the balance used to buy a survivors pension which cannot exceed the maximum pension the member would have received if they had stayed in service. Typically final remuneration is calculated as a multiple of the average of any 3 consecutive years from the previous 10 however, other definitions of final remuneration may apply.

Death before payment of preserved benefits-

A preserved benefit means an amount left in the scheme from a previous employment or held in a scheme relating to current employment which is no longer being paid into and you have no other pension relating to that employment at that time.

Where benefits are preserved within in a scheme, held in a buy-out-bond or a PRSA then they can be paid in full to the deceased's estate. Should benefits from an old scheme be transferred to a scheme in a new employment, technically this should be considered as a preserved benefit. However, this may not always be immediately apparent from an administrative perspective; caution should be exercised as you may end up with 4 times salary plus survivors pension.

Personal Pensions

The treatment of personal pensions can vary depending on the individual contract. Technically, the value of contributions to the scheme plus interest will be paid to the deceased's estate. In the case of older contracts, it may be simply the value of contributions that will be paid however with newer contracts the full value in the scheme will typically be paid.

Post-Retirement

Death in retirement -

ARF -

ARFs are unusual as when passed on, they are not treated in the same way as other inheritances. This is because any payment from an ARF is treated as a distribution. Such payments will be subject to income tax payable by the ARF owner in the year that they died.

There are two exemptions to this rule:

1) Should the value of the ARF be passed to the spouse or civil partner of the deceased, it will not be treated as a distribution.
2) Should the value of the ARF pass to a child of the deceased who is under 21 then it shall not be treated as a distribution, but will instead be subjected to inheritance tax.

Where a distribution is made to a child over 21, this distribution will be exempted from inheritance tax but will be subjected to income tax as Case IV Schedule D income. This is levied at a rate of 30%. This tax will be collected from the ARF at source.

Given this unusual treatment ARF's are ring-fenced for inheritance purposes. Where a spouse and children are involved, these rules can create a natural hierarchy as to whom pension assets should be left in the context of the broader estate.

Vested PRSAs -

Section 90 of the Finance Act 2013 allows for vested (post retirement) PRSA's to be treated in a similar manner to ARF's.

Annuity -

Annuity – ends on death

Guaranteed Annuity – continues in payment but if less than 5 years, a lump sum may be paid in lieu.

Annuity with dependant's pension – Dependant's pension will be paid as per the annuity purchased. Spouse or Civil partner are automatically deemed dependants. Children can be as dependants up to age 18 or 21 (if in full time education). Benefit cannot exceed the member's entitlement at retirement.

Developing your Plan

The best advice we can give in relation to inheritance matters is to plan and to plan early. Many available exemptions require onerous conditions to be met, such as a situation having existed for a number of years. Whilst such things may come about by chance, prudence tends to favour design. Planning early facilitates the optimisation of your affairs. It will ensure that certain options are open to you which may not be in later life.

Having a well formed plan and the right team of advisers will help maximise the value in your estate for your successors. Perhaps you wish to efficiently fund your grandchildren's education or perhaps you simply care about not unnecessarily wasting your hard earned wealth. Perhaps you have broader philanthropic objectives. Whatever your objectives, a little forward planning can make a big difference.

Developing a plan is a matter of taking your circumstances and matching them with your future wishes. We look at your assets and liabilities, family situation, desires and necessities. Your own wishes are key; some clients have rigid objectives whilst others are simply keen to explore the planning angles available to them in optimising wealth transfer. Your plan should be a comfortable marriage of your wishes and available efficiencies with a view to devising a well reasoned outcome.

Here we look at a number of ideas which may be employed as part of your broader plan. The following is not an exhaustive list of ideas but simply illustrates certain measures you may incorporate.

Section 72 Life Insurance

Section 72 life insurance is an inheritance tax planning tool which allows for the proceeds of a life insurance policy to pay an inheritance tax liability without the proceeds of the policy its self being subject to tax. This allows the full value of your estate can pass on as you wish. For this exemption to apply it is important that the inheritance is taken on or after the death of the insured but not later than one year after the death of the insured.

This can be highly cost effective way of transferring wealth from one generation to the next whilst providing certainty the both those giving and those receiving wealth. A Section 72 policy is a “whole of life policy” set up to meet the requirements of Section 72 Capital Acquisitions Tax Consolidation Act 2003. The policy is set up under a Section 72 trust making the proceeds of the policy exempt from inheritance tax.

Unlike conventional life insurance which covers the possibility of you dying by a particular date, “Whole of Life” cover is guaranteed to pay out once you die no matter when that might be. How the policy should be set up will depend on the several factors such as your age and health. In the case of couples the policy is usually written so as it pays when the second person dies. This can have a very positive effect on cost.

There are certain restrictions relating to Section 72 life insurance; premiums on the policy must be paid by the insured or in the case of a joint policy one of the insured and not by those who will benefit from the inheritance. The policy must have been set up expressly for the purpose of paying inheritance tax. Should the policy prove to be of a greater value then required, the excess proceeds will not be in themselves exempt.

A similar mechanism can be used for the payment of gift tax, this is referred to as a **Section 73** policy and operates in a broadly similar manner with certain additional time related restriction.

Here is a case study followed by some illustrations on the cost of cover and a graph giving a cost benefit analysis on Section 72 cover.

Case Study

John and Mary are married, they are both 45 years of age and have two children. They have a mortgage on their home which is worth €620,000 but will have this paid off by age 60. Should either of them die before then, they have a life insurance policy which will clear their mortgage. They have savings of €80,000 and a share portfolio which John recently inherited from his uncle worth €120,000. They also have an apartment which Mary used to live in before they were married which they now rent out. They estimate this to be worth €180,000; this also has an outstanding mortgage and is also covered by a life insurance policy. Should John or Mary die they plan to leave their whole estate to each other. This will pass tax free. They also plan that when the second of them passes their estate should be divided evenly between their children and are considering putting a Section 72 policy in place to cover this eventuality.

Let’s take a look at the numbers. Each of their children will receive an inheritance of €500,000. The first €280,000 of this will be tax free leaving a taxable amount of €220,000. This is taxable at 33% therefore each child would have a tax liability of €64,730. For the sake of example I am assuming no other reliefs or exemptions are available.

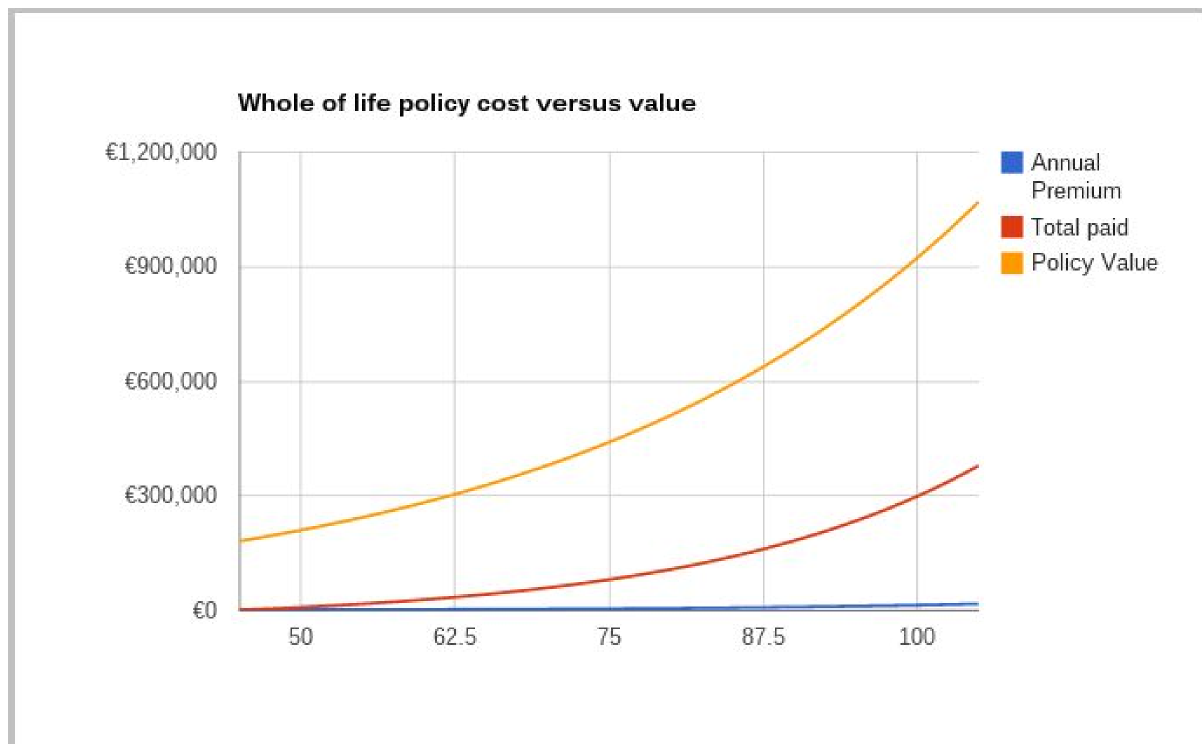
Cover required

The policy required is a "Joint life second death whole of life insurance policy". This policy is guaranteed to pay out once the second person dies. The policy increases at 3% per year so its real value should not be eroded by inflation, likewise the premium payable will also increase accordingly. Both children can be covered under one policy so John and Mary need €129,460 of cover.

Cost

Based on their age and neither of them smoking, the premium for this cover would be €81 per month. Had John and Mary been aged 55 the premium would be €134 and at 65 it would cost €236 per month.

Sample Cost Benefit Analysis



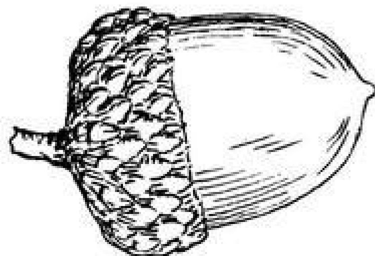
You can obtain a whole of life policy quotation here; www.smpfinancial.com/wholeoflifequotation.html

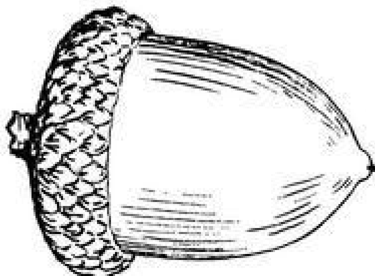
Small Gift Exemption

This is one of the simplest and most practical planning tools available. The Small Gift Exemption allows for €3,000 per year to be gifted from one person to another without giving rise to a charge of CAT. It is a useful measure for those of modest means and those of considerable wealth alike.

The Small Gift Exemption applies on an annual basis without affecting group thresholds and is applied between any one parson and another. For example, Jack has 10 grandchildren; the limit applies to each grandchild allowing €30,000 to be passed. If Jack's wife Mary also wished to pass €3,000 to each grandchild, this would also be possible thereby allowing €60,000 per year to be passed without any impact on limits occurring. If one of Jack's grandchildren was fortunate enough to have a grandparent on the other side of his family who also wished to pass €3,000 per year, this would also be allowable as the limit applies to money being received from "any one disposer" to the person receiving in the period.

It may not be desirable to simply pass money, particularly somewhat trivial amounts, to people without a plan or structure as this may simply get whittled away. In order to provide for a fund of substance, the Small Gift Exemption is often used in conjunction with other structures such as a trust so as a meaningful fund can be built over.





Using a Trust Fund

We often associate children's trust funds as being the preserve of the rich and famous. However, this is far from the truth. A trust fund can be simply implemented, can be a great a piece of financial planning and be affordable. A trust fund is often used in conjunction with other planning measures such as the Small Gift exemption. They may also be used to pass on larger amounts to maximise the benefit offered by the Group Thresholds.

Let's look at the very basic reasons for setting up a trust fund. Here are some key advantages:

Limits & growth in the fund

Why does this matter? Money passed today is included at it value today. Should this be invested and grow in value, this will happen when that money is in your child's beneficial ownership and hence will have no further impact on their lifelong limits. Let's take an example. Say you passed the full €280,000 limit into your child's trust fund today and that money was invested prudently and grew in value by 5% per year. In 30 years time that €280,000, which had been passed tax free, would be worth just over €1.25m. If you had invested the money in exactly the same manner but passed it on in 30 years time, all things being equal you child would have a tax liability of just over €320,000.

Use the Small Gift Exemption to effectively extend Group Thresholds

Using the small gift exemption is a highly effective way of stretching the group threshold limits. Leaving any benefits from investment growth or planning aside, simply passing €3,000 per year per parent has the potentially to nearly double the €280,000 limit. Say for example you passed €3,000 from each parent so €6,000 to a child, this would amount to €240,000 over 40 years.

Many parents fear that by passing such small amounts that their children will simply whittle the money away. A solution here is to structure the arrangement so as the amounts transferred are not accessed until the parents passing. Popper structuring will also facilitate effective investment management and hence a substantial lump sum may be generated.

A trust fund provides security and certainty by separating your affairs from your child's

Many parents worry about their children's future. A trust fund can be an efficient way not only of passing wealth but also of providing a level of financial security for your children regardless of what happens in your future. For example, should you encounter unforeseen difficulties in business which impacted your future ability to leave a bequest or gift, a trust fund separates your affairs from your child's. Once it is in place, they become the beneficiary of the trust.

Making a will

Wills

Making and maintaining a will is a cornerstone of good planning and provides the following key advantages:

- Certainty over the distribution of your assets after death
- Certainty that your wishes will be carried out after your death
- Your decide who administers your estate
- Your estate will be less complicated and less expensive to administer
- A will facilitates tax planning ensuring efficiency in passing your wealth

A will is relevant to every person who has responsibilities, not just those with a wealth of assets. You may make any number of wills during your life time. Each new iteration of your will should clearly revoke any previous will. It is important to occasionally review your will as life moves on. This is of particular relevance at a time of major life events such as marriage, birth of a child, acquisition of significant assets, separation or divorce or on diagnosis with a serious illness.

A solicitor should be engaged to assist in the preparation of your will. It is important that your will considers your wishes beyond purely the financial. It is however also important that your will and financial planning are interlinked to ensure your planning objectives are met and your wishes are properly funded.

Before an estate is distributed, the deceased's executors must secure a grant of probate. This can be a weighty process especially where larger estates are concerned. It is therefore highly desirable that all records are kept up to date and in order to facilitate this process.

Planning Tip: When leaving an inheritance to married children, also consider including their spouses to take maximum advantage of the available exempt thresholds.

Making a will

Intestacy

If you die without having a valid will you are said to be intestate. This is not desirable as it will mean that your estate will be left to the State to be divided under the laws of intestacy. You will not have control of who administers your estate and your wealth may be divided in a way you did not desire. Not having a will limits the effectiveness of your financial planning.

Should you die intestate your spouse or civil partner will be entitled to a 2/3 share of your estate where you have children or the entire estate should you not. In the case of civil partners, surviving children may apply to have their share increased.

Should you pass intestate, an administrator will be appointed who will seek a grant of administration in advance of distributing your estate.

Legal rights share

Where a will has been made, a spouse or civil partner is entitled to elect to take a minimum share of the estate. This is known as their "legal rights share". If no provision has been made in the will for the spouse or civil partner then the legal rights share automatically applies. Where provision is made, a spouse or civil partner either take the bequest as made or elect to take their legal rights share.

Where there are children, the spouse or civil partners legal rights share is 1/3 of the estate. Where there are no children it is one half. Children do not have an absolute right to a share of the estate where a will has been made however they may apply for a share if they feel the parent has "failed in his/her moral duty" to make "proper provision". The rights of a spouse are absolute however those of a civil partners are not where the deceased had children.

Administration of Inheritance Tax

Making an Inheritance Tax return

CAT is a self assessed tax making the person receiving an inheritance responsible for ensuring their return is made promptly and accurately. A return must be filed should CAT be payable or should any inheritance received be within 80% of the relevant Group Threshold.

Filing an IT38

The form used to make a CAT return is an IT38. This is filed electronically through Revenue Online Service, ROS. For more information on registering for ROS click here: http://www.ros.ie/PublisherServlet/info/setupnewcust

An IT38 requires details of both the person leaving the inheritance and the person receiving it including their PPS numbers. Details of the property concerned and its estimated market value will be required along with certain other information.

For further information on completing a return see the Revenue's comprehensive guide IT39 at: http://www.revenue.ie/en/tax/cat/leaflets/it39.html

Valuation date

The valuation date is important for the following reasons:

- It is the date on which the market value of the property is established
- It will determine when you are due to pay and file
- It is the date on which the farmer test is applied in the case of agricultural relief

The valuation date will ordinarily be the earliest of the following:

- The date the property concerned can be retained for the benefit of the person receiving it
- The date it is actually retained by the person receiving it
- The date it is transferred or paid over to the person receiving it

The term "retained" refers to the act of identifying the benefits to be taken even if there are technicalities deferring delivery. This means that the date of a Grant of Probate (also referred to as a Grant of Representation or Grant of Administration) is often used as the valuation date.

In a case where the person leaving the inheritance has mandated an inheritance but maintains the power to revoke it, the valuation date will be the date of death. This also applies to gifts made subject to the person making the gift dying.

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Pay and File Dates for inheritance tax

The date that a return is due depends on the valuation date

Valuation Date	Pay and File Deadline
1st January – 31st August	31st October that year
1st September – 31st December	31st October the following year

Planning tip: Whilst it may seem appealing to defer the payment of tax, it is generally prudent to pay as soon as possible as the value of the assets concerned may fluctuate over time. This has the potential to significantly diminish the real value received by the beneficiary of an inheritance.

Consequences of late filing

Revenue levy interest on late payments, they will also impose a surcharge based on the time past due at which the filing is made. This is calculated as follows:

How late	Surcharge %	Maximum penalty
Up to 2 months	5%	€12,695
Over 2 months	10%	€63,485

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Calculating Inheritance Tax

Outside of estimating potential future liabilities for planning purposes, prudence dictates that the services of an appropriate professional should be employed in calculating a liability.

In calculating inheritance tax liabilities, you must first establish the Incumbrance Free Value. This is the value that will remain after all liabilities, costs and expenses are met from the "market value" of the property. Market value is the best price that would be achieved should the property be sold on the open market; establishing this may require the services of a professional valuer. In calculating the Incumbrance Free Value, allowable items will include the outstanding debts of the estate such as a mortgage on a house. It will also include funeral expenses, legal and administration fees of the estate. Future debts and liabilities are also allowable; these may be discounted to arrive at a present value. Items that are not allowable include contingent liabilities where the liability may or may not occur based on future events, surety debts, a liability created by the person receiving the inheritance, tax interest or penalties chargeable to the person receiving the benefit, liabilities associated with receiving exempt property, and certain other items associated with persons or property outside of the State.

CAT calculations should be made as follows:

	Market Value of the Inheritance
Minus	Liabilities, Costs & Expenses payable out of the benefits and / or directly payable by the beneficiary
Equals	Incumbrance Free Value

Once you have established the Incumbrance Free Value, you need to then establish the taxable value. This is done as follows:

Incumbrance Free Value

Minus Any consideration paid to the person receiving the inheritance from the person leaving the inheritance. Or any such payment made at the direction of the person receiving the inheritance

Equals Taxable Value

Now you can calculate the CAT arising. This is done as follows:

Taxable Value

Minus Remaining threshold (Group threshold less previous gifts and inheritances since 05/12/1991)

Equals Taxable Total

Multiply the Taxable Total the current rate of CAT (33%) and subtract the annual exemption of €1,270 . This will give you your CAT liability.

Administration of Inheritance Tax

Online calculator

Visit http://www.smpfinancial.com/inheritance_tax_calculator.html to use our online inheritance tax calculator.

Sample calculation

Paddy receives an inheritance of €500,000 from his father. This consists of bank deposits of €150,000 and an investment property worth €350,000 which has a €100,000 mortgage outstanding. He has received no previous gifts or inheritance.

Market Value of Inheritance	€500,000
Less outstanding mortgage	-€100,000
Incumbrance Free Value	€400,000

Incumbrance Free Value	€400,000
Consideration paid	€0
Taxable Value	€400,000

Taxable Value	€400,000	
Minus threshold	-€280,000	
Taxable Total	€120,000	
Multiply by CAT rate @33%	€39,600	
Less annual exemption -€1,270	**€38,330**	**Equals total CAT due**

About us

About SMP Financial

SMP Financial was founded in 2007. Today the firm advises a select group of clients on their financial affairs. We have a particular focus on retirement and inheritance planning and also work closely with other specialist advisers on taxation, corporate finance and investment management on behalf of our clients. We are regulated by the Central Bank of Ireland and operate to an exacting set of guiding principles.

About the author

Donal Milmo-Penny founded SMP Financial with Garfield Spollen in 2007. He has 21 years experience gained as an advisor, investor, promoter and industry representative.

At SMP Donal advises individuals such as business people, professionals, wealthy individuals and families.

Donal is currently Chairman of PIBA, an industry association representing nearly 900 financial services firms. He also edits The Financial Broker, PIBA's

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