Gift & Inheritance

TAX PLANNING

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TAX PARTNERS

INTRODUCTION

It is time to consider what you have achieved and what you would like to achieve over the next few years. Tax planning should be part of your thought process and in particular gift and inheritance tax planning, to help preserve wealth.

While tax planning can appear complex, there are a few simple ways of reducing future gift and inheritance tax liabilities. Some areas for consideration are outlined below.

AVAILING OF ANNUAL GIFT TAX EXEMPTION

Parents can each give a gift of €3,000 per annum to each of their children and grandchildren without using up any of their lifetime thresholds. Over 18 years it would be possible to transfer €108,000 to a child tax free. This would be in addition to normal gifts for maintenance and education.

GIFT ON MARRIAGE

It may also be possible to make substantial gifts to a child on the occasion of their marriage. The level of gift that could be made depends on the circumstances of each case and in particular on the means and general expenditure of the parent.

LIFETIME THRESHOLDS

There is a lifetime tax free amount that can be gifted or inherited. After this, tax applies at the rate of 25% (from 7 April 2009). The tax free amount is determined by the relationship between the person making the gift or inheritance and the person receiving the gift or inheritance. The thresholds were recently reduced by 20% in the 2009 Budget and are effective in respect of gifts or inheritances received from 7 April 2009.

The 2009 thresholds are:

GROUP	RELATIONSHIP TO DISPONER	GROUP THRESHOLD	
		Post 7 April 2009	**Pre 7 April 2009**
A	**Son/Daughter**	**€434,000**	**€542,544**
B	**Parent*/Brother/Sister/Niece /Nephew/Grandchild**	**€43,400**	**€54,254**
C	**Relationship other than Group A or B**	**€21,700**	**€27,127**

* In certain circumstances a parent taking an inheritance from a child can qualify for Group A threshold.

INVESTMENT WITH CHILDREN

If you are making new long-term share investments, consideration should be given to taking your children in as minority shareholders. This has particular relevance with assets currently at a low value. The shares would be required to be held on trust until your children reach 18 years. A shareholders agreement should be drawn up to ensure a parent would retain voting control.

Properties could also be acquired in a co-ownership structure with children. Their share of the co-ownership would have to be held on trust until they reach 18 years.

The provision of a bank guarantee is not treated as a gift unless the guarantee is called for payment. By involving your children in part ownership of assets you are capping your own wealth and ensuring that future growth in their wealth does not give rise to gift or inheritance tax. It also eliminates capital gains tax and stamp duty if a decision is made at a later stage to transfer these assets to your children during your lifetime.

LIFETIME GIFT OF A DWELLING HOUSE

Even though a number of changes were introduced in the 2007 Finance Act (with effect from 20 February 2007), it is still possible to transfer a dwelling house to a donee, for example a son or daughter, without incurring gift tax. The exemption is still available where:

(a) A son or daughter resides in the house with a parent for a period of at least three years prior to the gift and during which period a parent was compelled by reason of old age or infirmity to rely on the services of the child, or

(b) A donee has occupied a house as his or her only and main residence for a period of three years preceding the gift and for a period of six years after the gift and where the donor (parent) has owned the house for the three years prior to the gift. This would apply for example where a parent buys a house and his son or daughter lives in it for three years and subsequently the parent gifts him or her the house. Careful attention needs to be given to the benefit of such a transaction following Finance Act 2007, as stamp duty would arise on the purchase by the parent. This could have been avoided if the son/daughter was a first time buyer or a reduced rate could have applied if it was a new house. Capital gains tax would also apply on an increase in value over the three years, although this is less of an issue in the current market. The same stamp duty rates should apply on the gift from the parent as when the parent purchased it originally. In most cases it can still give rise to substantial savings.

WILLS – TRUSTS

It is always a good idea to review or redraft your Will every few years, as your circumstances change. You should consider inserting a discretionary trust clause in your Will. This should ensure that inheritance tax is postponed until further planning can be carried out which could reduce the final tax payable to circa 2%. This could be achieved if your trustees were to purchase assets which would qualify for agricultural or business property relief before distributing them to your beneficiaries.

AGRICULTURAL & BUSINESS PROPERTY RELIEF

Agricultural and Business Property Relief reduces the taxable value of qualifying assets by 90%. The assets are normally required to be held for a minimum period of six years after the inheritance or gift is received. For gifts or inheritances taken after 2 February 2006, the clawback period was extended to ten years in relation to lands which have development value. Interest charges would be computed by reference to the date of the event giving rise to the clawback.

Woodlands also qualify for agricultural relief but there is no clawback period and the beneficiary is not required to qualify as a "farmer" for agricultural relief purposes. It should also be remembered that agricultural property includes farmhouses and mansion houses (together with lands occupied therewith) as are of a character appropriate to the property.

CGT/CAT CREDIT

If gift tax arises on the transfer of an asset which also gives rise to capital gains tax, the capital gains tax could be credited against the gift tax in most cases, thereby reducing the overall charge to 25%.

If a parent were to transfer shares in a company to a child, the capital gain tax arising on the disposal by the parent could be used to shelter gift tax payable by the child. Significant planning is required to ensure this relief is not lost. For example, the relief would be lost where the child had a tax free threshold remaining. In this case a gift of cash could be made to the child to use up their threshold, before the asset giving rise to the gain is made.

Please note that with effect from 2 February 2006 the asset transferred must be held by the child for a period of two years or the relief is clawed back. If you are thinking of disposing of long term investments, consideration should be given to transferring these to your children and for them to delay an onward sale for two years. This could be carried out using option agreements and could be advantageous to a purchaser from a cash flow perspective. This has worked well historically for the sale of development land.

REVENUE AUDITS

Revenue has reviewed a number of gift and inheritance tax returns to ensure that reliefs have been properly claimed. It is important that where you are availing of the CGT/CAT credit that the gift tax arises on the same event as the disposal.

It is also important to obtain professional valuations for any assets transferred, to ensure evidence is available should Revenue query any valuations.

INFORMATION RETURN ON GIFTS RECEIVED

Once a beneficiary has received more than 80% of their lifetime threshold, they are obliged to make a gift tax return. This would include, for example, annual gifts by virtue of interest-free loans from parents. The return must be made within four months of receiving the gift.

CONCLUSION

Without planning, up to 25% of your net wealth could be payable to Revenue on your death. This defeats the purpose of building up wealth in the first place. With a little time and some simple planning this cost could be reduced substantially. It is worth reviewing your existing inheritance tax plan every few years to update it for changes in family circumstances and changes in legislation. We would be happy to assist and would welcome an opportunity to meet with you and review your existing Will.

Should you wish to discuss any point in this memorandum or meet with us please contact any of the directors below.

This memorandum is intended as a guide to some of the CAT legislation. It does not purport to provide comprehensive tax advice and no steps should be taken in reliance on these notes without first obtaining detailed tax advice.

For further information, please contact **Eugene McQuillan** (eugene@pmqtax.com),
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