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# CPD Board – Tax Presentation 2019

Dublin, 3 December 2019

## FERGAL CAHILL

Fergal graduated in Law & Accounting from the University of Limerick and qualified as a Chartered Tax Adviser with the Irish Tax Institute in 2000.

Prior to founding CTS in 2007, his career included spells with PWC, FGS and KPMG.

Fergal's particular areas of expertise include Revenue audits, corporate restructuring, succession planning, personal tax planning and VAT on property.

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# Fergal Cahill

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# Prior Year Presentations

| 2015 |
|---|
| Tax Planning – Taxation, a Different Take |
| **2016** |
| Succession & Estate Planning |
| **2017** |
| Revenue Audits<br><br>Taxation of Litigation and Settlement Proceeds |
| **2018** |
| Tax Planning – Application to Legal Practices |

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# Presentation Structure 2019

| |
|---|
| **Part 1 – Limited Partnerships** |
| Overview of Legislation<br><br>Practical Application to Legal Practices |
| **Part 2 – Other Topical Tax Issues** |
| Topical Tax Issues<br><br>Budget 2020 |
| **Part 3 – Succession Planning** |
| Update 2020 – Case Study |

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# Part 1

# Limited Partnerships

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# Legal Services Regulation Act 2015

- Legal Services Regulation Bill – Initially published in 2012
- Bill enacted on 30 December 2015
- Legal Services Regulatory Authority ("LSRA") - Brian J. Doherty – Chief Executive Officer presentation
- The Act provides for the use of Limited Liability Partnerships (subject to a Commencement Order)
- Commencement Order signed on 7 October 2019 with applications signed by LSRA from 1 November 2019

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# Legal Services Regulation Act 2015

- Legal Services Regulation Act 2015
- Extends to 221 sections (plus schedules)
- Part 8 of the Act – Legal Partnerships, Direct Professional Access, Multi-disciplinary Practices and Limited Liability Partnerships
- Limited Liability Partnerships – Part 8 Chapter 3
- Sections 122 to 132

# Legal Services Regulation Act 2015

- Sections 100 to 121 - Legal Partnerships, Direct Professional Access and Multi-Disciplinary Practices.
- Provides the legislative basis for allowing legal practitioners to operate in partnerships.
- Makes provision for a “Legal Partnership”.
- Legislation provides for professional conduct code, insurance obligations, joint and several liability, operating procedures, complaints procedures and other regulatory requirements.

# Limited Liability Partnerships

- Section 122 – Limited Liability Partnership and professional codes

*"A professional body shall not, through its professional code or otherwise, prevent or restrict a legal practitioner who is a member of that body from working with, or otherwise doing business with, a legal practitioner providing legal services as a partner in, or as an employee of, a limited liability partnership."*

# Limited Liability Partnerships

- Sections 123 –Liability of Partner in a limited liability partnership

"A partner in a limited liability partnership shall <u>not</u>, by reason only of his or her being a partner or being held out as being a partner in that partnership, <u>be personally liable</u> directly or indirectly, by way of contribution or otherwise, <u>for any debts, obligations or liabilities arising in contract, tort or otherwise of –</u>

(a) The limited liability partnership,
(b) Himself or herself,
(c) Any other partner in that limited liability partnership, or
(d) Any employee, agent or representative of that limited liability partnership.

- Essentially provides for limited liability, with certain exceptions…

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# Limited Liability Partnerships

- No limited liability protection if:

1. The debt, obligation or liability arises from an act or omission of a partner which involves fraud or dishonesty.
2. The act or omission was the subject of a finding of misconduct or a criminal offence.
3. The debts or liabilities do not relate to the LLP.
4. Tax liabilities under Section 960A TCA 1997.
5. Acts or omissions of the partner prior to entering LLP not protected.

- Enforcement action can also be taken against property of the LLP.

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# Limited Liability Partnerships

- Section 125 – Application process:

1. Apply to LSRA – request a form
2. Pay an application fee of €175
3. An application number is issued by LSRA
4. Form checked by LSRA
5. Confirmation of Professional Indemnity Insurance required
6. LSRA will add the partnership to the list of LLPs and confirm effective date of LLP.

- Process takes no longer than 60 days

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# Limited Liability Partnerships

- Obligations of an LLP:

1. The LLP must notify its clients and creditors that it is now operating as an LLP.

2. Maintain professional indemnity insurance

3. The practice must add LLP to its name to all contracts, invoices etc.

4. The practice must ensure that details on the LLP register are correct. Details on the register include:

    - Name and address of each partner in the LLP
    - Name of practice
    - Date of effect
    - Details of any orders against the LLP

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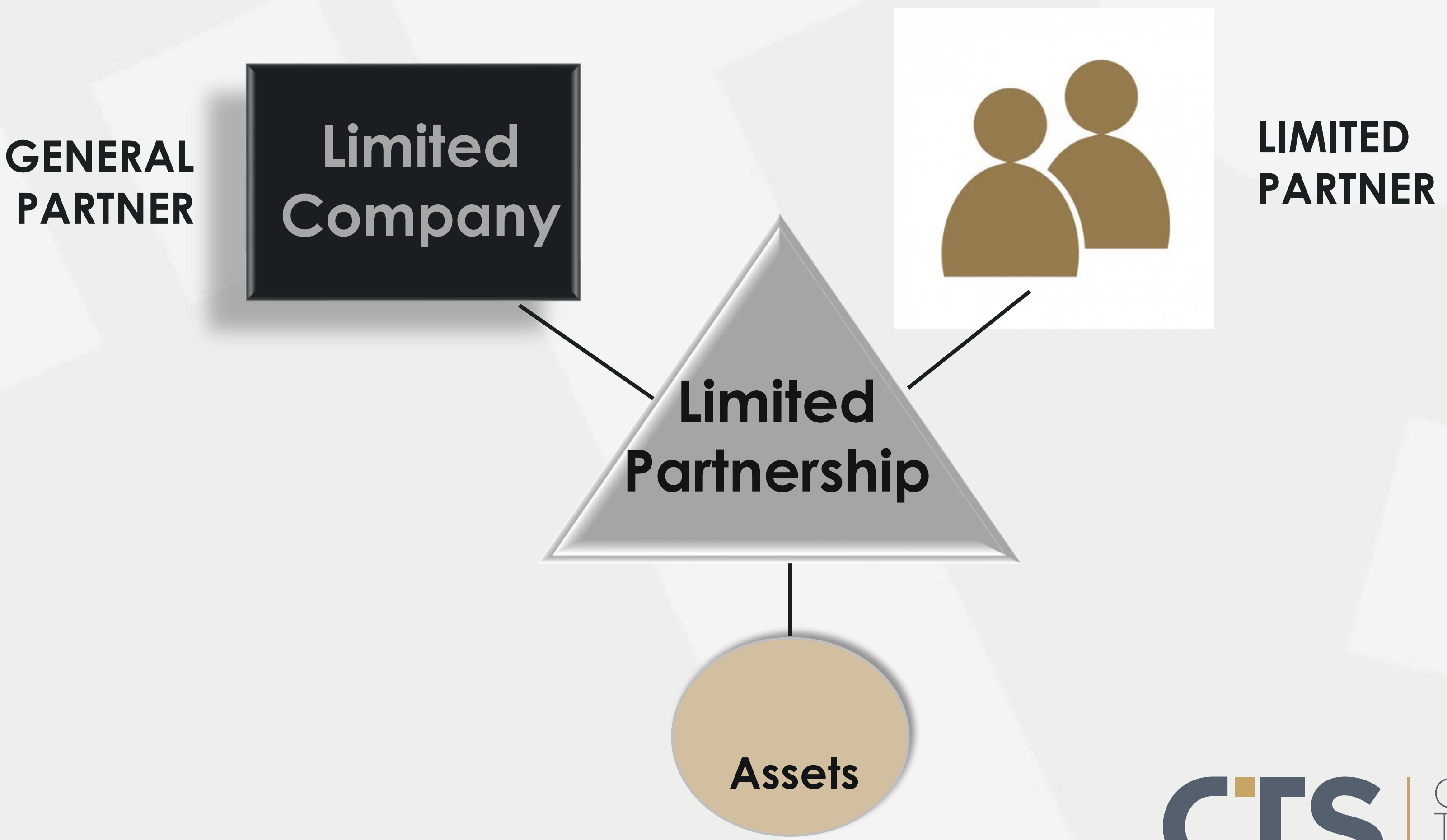
# Typical LLP Structure

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# Typical LLP Structure

- LLP structures commonly used in property investment.
- Individual investors would be made limited partners.
- Under LLP legislation, there is a requirement for a general partner – this is typically a company.
- However, in the case of a legal LLP, a partner has to be a person under the Legal Services Regulation Act 2015.
- Section 64(1) Solicitors Act 1954:

> *"A body corporate or director, officer or servant thereof shall not do any act of such nature or in such manner as to imply that the body corporate is qualified, or recognised by law as qualified, to act as a solicitor."*

So, no ability to involve a company in an LLP.

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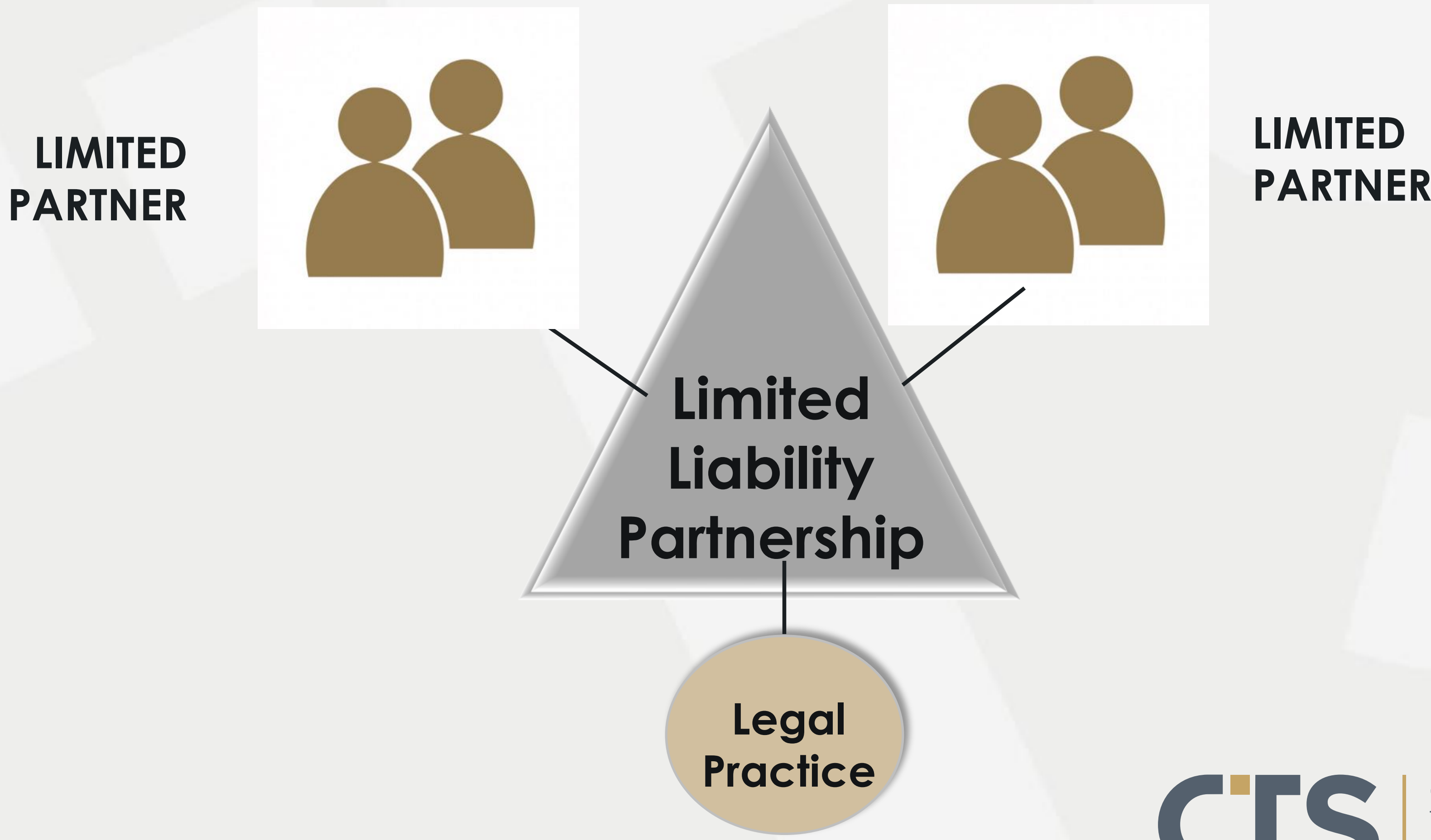
# LLP Structure under 2015 Act

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# Taxation of an LLP

- An LLP is treated as a transparent entity for taxation purposes.
- Therefore, the LLP does not pay income tax – obligation to file a Form 1 only with details of profit and losses etc.
- The members of the LLP are liable to income tax on their individual share of profits.
- The LLP will be required to register for income tax and will be issued with a tax reference number. I expect that the existing tax reference number will be maintained for legal partnerships converting to an LLP.
- Obligation to register for VAT and PREM taxes.

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# Taxation of an LLP

- If a legal partnership converts to an LLP, what are the tax implications?
- I think that there are no changes – the conversion to an LLP should not give rise to a cessation of the old practice and the commencement of a new practice.
- The partnership is essentially the same as before from a tax perspective.
- Is there any change to the partner's income tax positions?

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# Position Before LLP Status

**"Bad Rates"**

| Over €100,000 | €70,044 to €100,000 | €35,300 to €70,044 | | | Up to €35,300 |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.5% |

**"Good Rates"**

| | | | | | |
|---|---|---|---|---|---|
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |

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# Position After LLP Status

**"Bad Rates"**

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**"Good Rates"**

| | | | | | |
|---|---|---|---|---|---|
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |

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# Will LLP's be popular?

- I expect that a lot of partnerships will convert to LLP status. To date, there has been 140 requests for forms, 59 forms received, 1 LLP registered.

- The protection of limited liability is very attractive.

- Not a tax driven decision – there's no change to tax status.

- I expect that we will see more mergers of smaller practices.

- Mergers of sole trades offer many practical benefits:

  - Succession
  - Economies of Scale
  - Diversification
  - Many other benefits

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# Will LLP's be popular?

- There are a lot of sole trade practices in Ireland.
- Mergers of sole trades are not as common as one would expect.
- This may be down to a variety of reasons:
  - Property Issues
  - Debt Issues
  - Personalities
  - "Fear" – concerns over limited liability
- LLP's will offer the protection of limited liability which may take the "fear" out of merging with another individual.

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# Example 1

- Tom & Mary are in practice for many years.
- They decide to register their partnership as an LLP.
- The LLP registration is effective from 1 February 2020.

- The effect of LLP status is that Tom & Mary will no longer be personally liable to the debts and liabilities of the LLP from 1 February 2020.
- There is no change to their tax position – their practice has simply changed its legal status.

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# Example 2

- John has been operating as a sole trader for many years.
- John's practice is a traditional general legal practice offering conveyancing, estate work and some court work.
- John is considering his options in relation to long term succession, but he hasn't a successor within the practice. John owns his office.

- John operates his practice with an accounting year end of 30 June.
- He has considered a merger with another sole trader in the past (with an eye on succession and practice diversification).
- Limited Liability status is not available to him as a sole trader – therefore LLP status is attractive to John

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# Example 2

- Mary runs a successful legal practice, specialising in litigation (with some conveyancing).
- Mary is increasingly generating conveyancing work, but hasn't the capacity to deal with the work while running complex litigation cases.
- Mary operates as a sole trader and therefore cannot avail of LLP status.
- Mary prepares sole trade accounts to 31 December annually.
- Mary operates her sole trade practice from a rented premises.

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# Example 2

- John approaches Mary with a view to discussing the possibility of a merger.
- The gamechanger is LLP status – both parties would benefit from limited liability status as part of a merged entity.
- John and Mary discuss practical issues such as staff, insurance, merged practice structure, property etc.
- John and Mary decide to merge.

- They register the LLP with effect from 1 May 2020.

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# Example 2 – Practical Decisions

| | Issue | Decision |
|---|---|---|
| 1 | Property | It is agreed that John would lease his office to the LLP for an arm’s length rent.  A lease agreement is put in place. |
| 2 | Management | Mary is made managing partner of the merged LLP. |
| 3 | Agreement | A new partnership agreement is drawn up and a profit sharing ratio is agreed.  Provision is made for the introduction of new partners as John intends to retire in 5 years. |
| 5 | Employees | TUPE requirements for both John and Mary’s practices arising from transfer of employments to LLP. |
| 4 | Office Equipment | Practical decisions made around office equipment, IT etc. |
| 6 | Insurance | A new PI policy is taken out for the merged entity. |
| 7 | Banking | A bank account is opened up for the merged entity. |
| 8 | Financial | A monthly personal drawing is agreed by John and Mary. |

# Example 2 – Taxation Issues

| | Issue | Decision |
|---|---|---|
| 1 | Registration | LLP registers for income tax, VAT and PREM. Practice commences on 1 May 2020. |
| 2 | Office Equipment | LLP purchases office equipment from John and Mary – possible balancing charges / allowances. |
| 3 | Property | John leases the property to the LLP. As the property is in the VAT net, John needs to exercise his landlord's option to tax and therefore charges VAT at 23% on the rents. The LLP recovers the VAT. |
| 5 | Commencement Rules | A decision is made to select an accounting year end of 30 April 2021. Therefore, both John and Mary will be required to include 8/12ths of the LLP profits for the year ended 30 April 2021 in their 2020 income tax returns.<br><br>This is in addition to their own sole trade profits (reference next slide).<br><br>2021 will be based on profits to 30 April 2021 (with possible to actual depending on profit levels) |

# Example 2 – Taxation Issues

<table>
<tr><th>Issue</th><th>Decision</th></tr>
<tr><td>Cessation Rules<br><br>John</td><td>John’s previous year end was 30 June 2019. John’s taxable profits for 2019 & 2020 would be as follows:<br><br>• 2019 – Originally assessed on profits for the year ended 30 June 2019. Requirement to revise the assessable profits to actual profits earned in the calendar year 2019 i.e. 6/12ths of profits to 30 June 2019 plus 6/10ths of profits to 30 April 2020<br><br>• 2020 – John will be taxable on 4/10ths of profits to 30 April 2020.</td></tr>
<tr><td>Cessation Rules<br><br>Mary</td><td>Mary’s previous year end was 31 December 2019. Mary’s taxable profits for 2019 & 2020 would be as follows:<br><br>• 2019 – Originally assessed on profits for the year ended 31 December 2019. No revision necessary.<br><br>• 2020 – Mary will be taxable on 4 months of profits to 30 April 2020.</td></tr>
</table>

# Example 3

- Tom runs a legal practice in a regional town.
- Tom has kept a tight reign on the practice for many years – fear of liability has prevented him from expanding the practice.
- Tom has seen a number of personnel changes in his practice – lack of career progression, ambition and diversity of work cited as the main reasons.
- Tom is attracted by the prospect of limited liability status and is interested in the Legal Services Regulation Act 2015.
- Tom enquires about his options with LSRA – he is disappointed with the outcome.
- Benefit of limited liability is not available to him as a sole trader – this is thought provoking for Tom.

# Example 4

**Will LLP's make succession within practices easier?**

**Let's review example from 2018 presentation.**

- Michael starts his practice at age 30.
- Michael left a practice in the same town and brings a number of clients with him.
- Michael is a conveyancing expert, but hires a solicitor to work in probate.
- Michael steadily builds his practice. After 5 years, Michael borrows money to buy an office.
- Michael takes a regular monthly drawing from the practice, more than sufficient to meet his lifestyle needs – he leaves the balance in the practice.

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# Example 4

- At age 40, Michael hires a young solicitor, Pat, with expertise in litigation.
- Pat is hired as an employee. Pat leverages off Michael's client base to generate litigation cases.
- Michael incentivises Pat with bonus structure and identifies his career path – clear goals and objectives with a view to becoming a partner.
- By age 45, Michael introduces Pat as partner (age 30). Split of 75%/25% agreed.
- Within 5 years, Michael realises that litigation practice contributing as much as conveyancing practice. Pressure comes on from Pat to increase his profit share from 25%.

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# Example 4

- Agreement to share profits 50/50. Michael now age 50 and Pat 35.
- New hires are taken on to support both conveyancing and litigation practices. Volume of estate cases increase. A healthy diversity of services in the practice.
- Practice income "leans on" litigation services during the property down turn. Practice rides the storm.
- Pat starts to drive on the practice, Michael starts to slow down.
- Pat wants to grow. Michael wants to steady on.
- Both Pat and Michael have healthy capital accounts, retention of set amounts every year after paying maximum pensions and taxes.
- Pat makes a move to take over from Michael.

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# Example 4

- Michael resists – the young whipper snapper has got cheeky.
- Tensions arise – however, sense prevails. Terms agreed (sensibly negotiated by advisers).
  - (a) A rent is agreed for the office.
  - (b) Agreement to pay Michael's capital account within 18 months.
  - (c) Michael becomes an employee, wage agreed with a bonus share.
  - (d) Pat assumes 100% ownership of the practice.

- Michael comes in the next morning and does the same job as he did before.
- Life goes on.

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# Example 4

- **LLP option will make transitions such as the above for Michael and Pat easier.**

- LLP status will take “fear” out of the discussion.

- Limiting liability to debts of practice only, would make conversations easier during the lifecycle of the practice.

- No change to the tax position – LLP is solely about limiting liability.

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# Part 2

# Topical Tax Issues

# Budget 2020

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# Topical Taxation Issues

- Debt releases
- Budget 2020 changes
- Topical Revenue audit areas

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# Debt Release


- What is debt release?

- **Debt Release** is:

(a) The write off/release in full or in part from the obligation to repay money borrowed to fund:

(i) The acquisition of an asset

(ii) The enhancement of an asset

# Background – Debt Release

- What are the drivers to debt release?
- **Drivers**:

(a) Recapitalisation of Pillar Banks – Central Bank Regulations.

1. AIB NPLs - €31 billion in 2013 reduced to €7.2 billion in 2018*
2. BOI NPLs - €15 billion in 2014 reduced to €6.7 billion in 2018**

(b) Rationalisation – BOSI, Danske Bank (ACC)

(c) Personal Insolvency/Bankruptcy – legislation

* Irish Times Friday 28 September 2018

** Moody's credit opinion - BOI Consolidated Financials - 21 December 2018

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# When is debt released

(a) the date the lender formally confirms to the borrower that the debt has been released,

(b) the date an agreement or understanding has been reached between borrower and lender, even in the absence of a formal confirmation, that the debt is no longer required to be repaid,

(c) in the case of a limited recourse or non-recourse loan, the date the excess of the loan amount over the amount realised on the sale of the land or property is automatically released.

(d) the date of discharge when the release of debt results from bankruptcy or personal insolvency.

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# Tax Impact of Debt Release

- Personal/Business/Tax Considerations.

- **Impacts on**:

(a) The cost to be deducted in the computation of the capital gain/(loss) on disposal of the asset.

(b) Trade/Rental Interest deduction – may give rise to a taxable receipt.

(c) Reduces trading losses forward.

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# Legislation

**Income Tax Aspects**

- Section 87 TCA 1997
- Section 87B TCA 1997 - specified losses pre 13/02/2013
- Section 381A TCA 1997 – specified losses post 13/02/2013

**Capital Gains Tax Aspects**

- Section 552(1B) TCA 1997 – FA(No.2) 2013 effective from 1 January 2014

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# Legislation – S.87B TCA

- Relates to individuals/partnerships engaged in land dealing/development.

- Provides that the release of debt is treated as an income receipt taxable in the year of release under Case I/IV (on cessation of trade).

# Legislation – S.381A TCA

- Effective post 13 February 2013

- Restricts use of specified losses derived from

    - Interest  - on a paid basis
    - Trading Stock - Losses realised on trading stock sold

- Connected Parties anti avoidance

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# Section 87B/381A

- Section 87B and 381A were introduced in reaction to the increase in Case I loss relief claims by developers post the property crash.

- Prior to introduction of 87B it was possible for a taxpayer/developer to reduce the carrying value of trading stock to the lower of cost or net realisable value.

- The loss was available for offset against other income.

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# Section 87B/381A

- Section 87B deems the “release” to be “income” in the year the debt is released.
- From an income tax perspective a Section 87B receipt may give rise to income taxable at marginal rates. However, developers should have trading losses carried forward available for offset against the deemed income (unless previously offset against other income in the past).
- However, losses forward are not deductible for PRSI purposes. Therefore, while losses forward may shelter the deemed gain from income tax/USC, the developer may be subject to PRSI @ 4% on the deemed gain.

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# Case Study 1 – S.87B/381A

- In 2006 Tom (a sole trader) purchased a 2 acre site outside Tuam at a cost of €600,000. He borrowed €300,000 and invested €300,000 of his own money to fund the purchase of the site.
- In each of the years 2009, 2010, 2011, 2012, 2013 Tom reduced the carrying value of the development land by €50,000 and included this diminution in the value of the land in the P&L Account each year.
- Tom claimed an annual deduction for loan interest of €30,000. This was interest accrued but not paid.
- In 2014 the debt on the site was €450,000. The site was sold in 2014 for €200,000 and the remaining debt of €250,000 was written off.
- What are the IT implications of the debt release?

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# Case Study – 1 - S87B/S381A

| Details | Pre 87B | Post 87B |
|---|---|---|
| Income from site sale | €200,000 | €200,000 |
| | | |
| Carrying value of property | (€350,000) | (€350,000) |
| Case I loss | (€150,000) | (€150,000) |
| Deemed Case I receipt | | €250,000* |
| Deduct specified loss fwd | | €100,000 |
| Revised specified loss | (€150,000) | (€0) |
| * €250,000 subject to PRSI @ 4% | | |

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# Legislation – S.552(1B) TCA

S.552(1B)(a) defines

"connected person" has the same meaning as in *section 10*;

- "debt" means a debt or debts, in respect of borrowed money, whether incurred by the person making the disposal of an asset or by a connected person;

- "group" and "member of a group" have the same meanings, respectively, as in *section 616*.

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# Legislation – S.552(1B) TCA Contd-

- S.552(1B)(b) states where the cost or enhancement expenditure on an asset,

was funded from borrowed money, the debt in respect of which is released in whole or in part *(whether before, on or after the disposal of the asset)*, the cost shall be reduced by the lesser of the amount of

the debt which is released

or

the *amount of the allowable loss* which, but for this subsection, would arise.

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# Legislation – S.552(1B) TCA Contd-

- S.552(1B)(d) states that where
    - a debt is released in whole or in part
    - after the year of assessment in which the disposal of the asset takes place
    - That a chargeable gain is deemed to accrue
- S.552(1B)(e)proviso
    - release cannot create a taxable gain which would otherwise exempt e.g. on disposal of PPR

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# Case Study 2

- In 2006 Tom borrowed €600,000 to fund the purchase of two properties costing €400,000 each. He invested €200,000 of his own money.
- Tom reduces the debt over time to €500,000. In August 2013 Tom is instructed by the bank to sell the properties.
- Property A is sold in December 2013 for €100,000 and Property B is sold in February 2014 also for €100,000.
- Bank agrees to write off the remainder of the debt of €300,000 in March 2014.
- What are the CGT implications of the debt release?

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# Case Study – 2 CGT Calculation

| Details | Property A | Property B |
|---|---|---|
| Proceeds from sale | €100,000 | €100,000 |
| **Deduct Cost** | | |
| Cost of Property | €400,000 | €400,000 |
| Capital Loss | (€300,000) | (€300,000) |
| Adjusted cost S.552(1B) | 0* | €150,000 |
| Revised Capital Loss | (€300,000) | (€150,000) |
| | | |
| * No adjustment required as property was sold prior to 1 January 2014 | | |

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# Bank Negotiations

- Restructure of debt in connection with sale of some or all of the assets.
- Important to analyse the potential CGT relief's on property where there is potential for debt release.
- To factor in the "tax cost" of the debt release in reaching an agreement with the financial institution.
- Section 552 adjustment should not result in a CGT liability – it reduces the capital gain to Nil at worst.

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# Recommendations

- Income Tax  (Developers)

- Prepare trading profit & loss account as normal without regard to debt adjustments.

- Determine and verify losses forward (not always accurately calculated).

- Establish the developers equity in the original acquisition.

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# Recommendations – Contd

- Income Tax  (Developers)

- Provisionally trawl through the loan statements to determine the debt write down – discuss with Bank whether sale proceeds have been applied against interest or capital.

- Include deemed income in the computation  - offset losses forward.

- Note PRSI is an issue – 4% liability will arise based on current legislation.

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# Recommendations - Contd

- <u>Capital Gains Tax</u>

- Establish the facts.

- Prepare a capital gains tax computation without regard to the debt release adjustment.

- Determine when the asset was sold (in particular whether the sale took place pre or post 1 January 2014).

- Establish when the bank formally or informally agreed to the debt write down.

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# Recommendations – CGT - Contd

- <u>Capital Gains Tax</u>

- If Section 552 applies forensically trawl through loan statements to determine the extent of the debt write down.

- Adjust the CGT computation for the debt write down within the scope of S.552

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# Conclusion

- Understand the losses claimed/unclaimed in conjunction with S.87B/S.381A/S.552(1B).
- Prepare your client for the unexpected tax liabilities arising in connection with debt release e.g. PRSI charge.
- Revenue could review tax treatment of debt release settlements in the future so you need to dot the I's and cross the T's now!

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# Stamp Duty

- Stamp duty on residential property rate remains at 1% (up to €1m) and 2%.
- Stamp duty on commercial property increased by 1.5% from 6% to 7.5%.
- In response to "commercial property market continues to perform strongly" – a perceived bubble in the commercial property market?
- What about SMEs and individuals that need to restructure?
- What about small businesses looking at succession planning?
- Is this a Dublin focused measure?

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# Capital Taxes

- Capital Gains Tax rate remains at 33%.
- Capital Acquisition Tax rate remains at 33%.
- No changes to reliefs.
- Entrepreneur Relief in particular not changed – not at this time.
- Missed opportunity on Entrepreneur Relief

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# Entrepreneur Relief

Rate of 10%

On First €1m of gains

Onerous and strict criteria

Rate of 10%

On First £10m of gains

Wider application and availability

# Capital Acquisition Tax

| | Threshold Pre-Budget | Threshold Post Budget | Difference |
|---|---|---|---|
| Group A | €320,000 | €335,000 | €15,000 |
| Group B | €32,500 | €32,500 | € - |
| Group C | €16,250 | €16,250 | € - |

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# Transfer of Family Business

- Tommy has a retail business in Mullingar which he has operated for many years.
- Tommy's daughter Caroline is looking to take over the business.
- The business, including the business premises, is valued at €500,000.
- What tax liabilities will arise for Tommy and Caroline on a transfer of the business?

# Tax on Family Business Transfer

| Business Transfer Within a Family | | |
|---|---|---|
| Capital Gains Tax | € 0 | Retirement Relief |
| Capital Acquisitions Tax | € 0 | Business Property Relief & Group A Threshold |
| Stamp Duty | €37,500 | No Relief |

- No CGT and no CAT which is good news.
- However, the absence of stamp duty relief is a massive issue. It will result in asset transfers being delayed until death. Consanguinity Relief should be extended.

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# Revenue – New Structure

- Large Corporates Division – T/O > €190m, Taxes > €18m
- High Wealth Individuals Divisions – Assets > €50m
- Medium Enterprises Division – T/O > €3m < €190m
- Business Division
  - Entities registered for VAT, RCT, C&E, Excise
  - Entities with trade income, proprietary directors
- Personal Division

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# Revenue Audits – Current Topics

- Information received from FATCA/AEOI – offshore accounts
- Share schemes
- Case V / Airbnb income
- CAT Reliefs – all, but focus on Section 86 Dwelling House exemption
- Disguised remuneration e.g. loan schemes, Employee Benefit Trusts etc
- Transborder worker relief claims
- PAYE Modernisation compliance visits are planned
- Old reliables – RCT, expenses, E-Audits, Professions etc

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# Part 3

# Succession Planning in 2020

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# Case Study

- John and Mary are both aged 64.
- Married for 38 years with 4 adult children and 8 grandchildren.
- They have run a very successful business and have amassed a lot of wealth.
- Both John and Mary are both very much involved in the family business, but are looking to step back. Their oldest son, Thomas, is also very much involved in the business and appears to be the natural successor.

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# Case Study – Schedule of Assets

| Asset | | Values |
|---|---|---|
| Principal Residence | | **€700,000** |
| Farm (200 acres) | | **€2,000,000** |
| Family Business (shares) | | **€4,500,000** |
| Pension Fund | | **€1,000,000** |
| Rental Properties (x3) | | **€1,500,000** |
| Cash & Investments | | **€1,000,000** |
| | | |
| **Total Assets** | | **€10,700,000** |

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# Case Study – Schedule of Income

| Source | | Income |
|---|---|---|
| Mary's Pension | | **€30,000** |
| OAP (at age 66) | | **€24,000** |
| Rental Income | | **€45,000** |
| Pension Fund | | **€????** |
| Farm Income | | **€????** |
| Salaries | | **€30,000** |
| | | |
| **Total Income** | | **€129,000** |

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# Case Study – The Family

- **Thomas** is the oldest in the family, is married and has 4 minor children. Thomas works full time in the business. John is still the boss though!

- **Catherine**, their daughter, is also married and has 4 children. Catherine is a professional and is married to a farmer. Catherine is not involved in the business.

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# Case Study – The Family

- **Eoin** is single and works in IT. He lives in Dublin and is described by his parents as a "free spirit". He has no interest in either the farm or the business. John doesn't understand why Eoin has no interest in cattle!

- **Michael** is the youngest and lives at home with his parents. Michael has an intellectual disability and works part time with a local charity.

- Michael is in receipt of the State disability benefit. Michael is particularly close to Catherine.

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# Case Study – The Father

- John is 65 on his next birthday. He has worked hard all his life and successfully built up the family company while also running a farm.
- John is still very much involved in the family business. He is slowly letting go of the business and recently appointed Thomas as CEO. Mary thinks John interferes too much in the business and is often critical of Thomas's plans for the business.
- John and Mary have lived frugally, changing their car every 10 years or so. They rarely go on holidays.
- John is finding it hard to run the farm of late and quite often calls on the assistance of Catherine's husband.

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# Case Study – The Mother

- Mary is a retired civil servant. She took early retirement and has worked in the office (she does the books).

- Mary wants John to retire and step away from the business. It's time to enjoy the fruits of their labour.

- Mary owns 50% of the shares in the business.

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# Case Study – The Concerns

- John & Mary are concerned about Michael and what would happen to him after their passing. They don't want him to lose his State benefit and are concerned that if they leave assets to him, he won't be able to mind the assets. His benefits are worth about €25,000. This is their number 1 priority.

- John has never liked paying tax. He is concerned about inheritance tax.

- John is also anxious to ensure that the family home and farm, which have been in the family for generations, are protected. He is concerned about divorce and "in laws" (Mary is not!).

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# Case Study – Current Will

- John & Mary have only a basic will in place.
- The will leaves the assets to each other.
- In the event of them both passing away, the assets would be left equally amongst their 4 children.
- I tell them that this would be a disaster and that they need a plan. Michael would immediately lose his benefits.

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# Case Study – Taxation (Current Will)

| Asset | | Tax Comp |
|---|---|---|
| Total Assets | | **€10,700,000** |
| | | |
| Thresholds | X 4 | **€1,340,000** |
| | | |
| Taxable | | **€9,360,000** |
| | | |
| **CAT** | | **€3,088,800** |

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# Case Study – Taxation (Current Will)

- John goes off his head at the thought of giving over €3m to the taxman.
- As the will leaves assets between the four, asset sales would be inevitable. Clawback periods for tax reliefs would not be satisfied. Farm and Business may have to be sold.
- Michael would also lose his State Benefits worth ca. €25,000 p.a. This would substantially reduce their estate.
- I press them for their wishes. I tell them we can put a plan in place around those wishes.

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# Case Study – Wishes

| Asset | Beneficiary | Value |
|---|---|---|
| Principal Residence | **Catherine** | €700,000 |
| Farm (200 acres) | **Catherine** | €2,000,000 |
| Family Business (shares) | **Thomas** | €4,500,000 |
| Pension Fund | **Michael** | €1,000,000 |
| Rental Properties (x3) | **Eoin/Michael** | €1,500,000 |
| Cash & Investments | **?????** | €1,000,000 |
| | | |
| **Total Assets** | | **€10,700,000** |

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# Case Study – Initial Thoughts

- I tell them that they are No. 1 in that we need to be satisfied that they have:

   1. **Income** (guaranteed where possible) in their retirement (we all live longer nowadays).

   2. **Capital** to fall back on in the event of an unforeseen bill arising.

- I suggest that they need to consider transferring assets to the next generation in their lifetime (Mary is delighted to do that!) and that they can afford to do that.

- I tell them that there are tax reliefs that can be considered to minimise their taxes.

- I tell them that we can also "protect" Michael's benefits.

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# CTS Approach

- Look at succession and estate planning in tandem.
- What are the clients' wishes?  What are the preferences?
- Every individual is different:
  - Some individuals want to protect their assets at all costs (e.g. concerned with in-laws).
  - Some individuals want to pay no tax at all costs (anything but pay the taxman).
- Therefore, every individual needs a plan that is tailored to suit their specific wishes and preferences.
- Every case is different.
- Don't let tax dictate everything.

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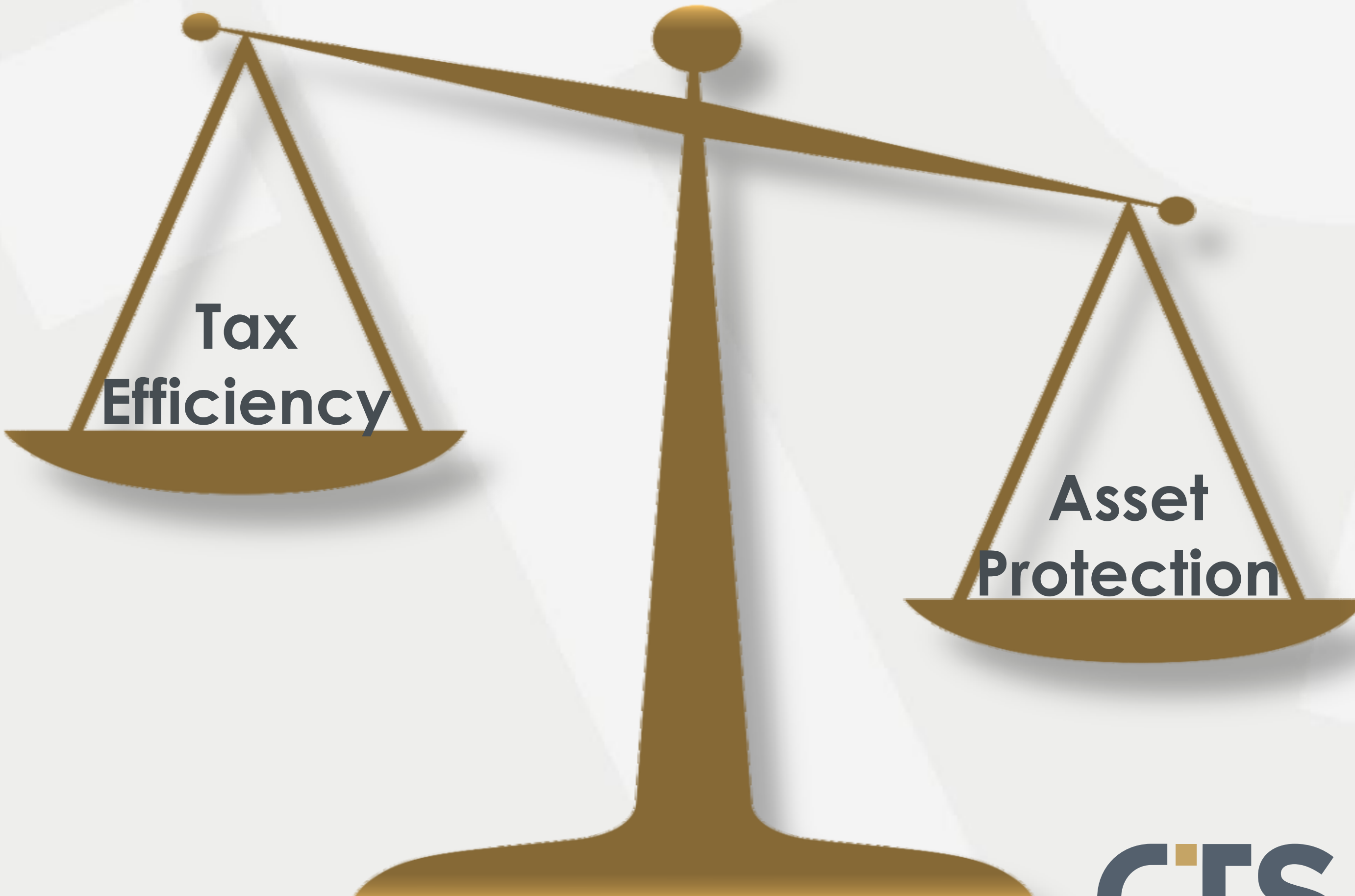
# What is preferred?

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# What is preferred?


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# What is preferred?


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# Taxation – The Basics

**Three main tax issues:**

(a) Capital Gains Tax ("CGT") – now 33%

(b) Capital Acquisitions Tax ("CAT") – now 33%

(c) Stamp Duty – 7.5% (1% on shares)

- Careful advance planning required
- There are other taxes to consider, these are the main ones (income tax in particular needs to be managed)

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# Comparison of Gift & Inheritance

| Tax | Gift | Inheritance |
|---|---|---|
| **CGT** | Yes | **N/A** |
| **CAT** | Yes | Yes |
| **Stamp Duty** | Yes | **N/A** |

# Tax Rates – 2019

**“Bad Rates”**

| | | | | | |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.5% |

**“Good Rates”**

| | | | | | |
|---|---|---|---|---|---|
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |

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# Tax Rates – 2019

**"Bad Rates"**

| | | | | | |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.5% |
| 25% | 19% | 12.5% | 10% | 3.3% | |

**"Good Rates"**

0%

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# Capital Gains Tax

**"Bad Rates"**

CGT

| 55% | 52% | 48.5% | 40% | 33% | 28.5% |
|---|---|---|---|---|---|

**"Good Rates"**

| 25% | 19% | 12.5% | 10% | 3.3% | 0% |
|---|---|---|---|---|---|

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# Capital Gains Tax

**"Bad Rates"**

| | | | | CGT | |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.5% |

**"Good Rates"**

| | | | | | Retirement Relief |
|---|---|---|---|---|---|
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |

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# Capital Gains Tax

**"Bad Rates"**

| | | | | | |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.5% |

**"Good Rates"**

| | | | | | |
|---|---|---|---|---|---|
| | | | | | Section 626B |
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |
| | | | Entrepreneur Relief | | |

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# CGT – The Reliefs

| CGT Reliefs | Relief |
|---|---|
| Retirement Relief | 100% |
| Entrepreneur Relief | 10% CGT Rate |
| Section 626B (Corporates only) | 100% |
| | |
| Stamp Duty – Consanguinity Relief | 7.5% to 1% |

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# CGT

- CGT – can be the most problematic of taxes.
- Establish "base cost" of all assets.
- Establish the facts.
- Establish whether reliefs available.

  - If there is no relief available and CGT liability is significant, the individual may have no choice but to leave that particular asset to the next generation in their will.

  - If a house was purchased in 1980's/90's in Dublin, latent capital gain a problem.

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# Capital Acquisitions Tax

**"Bad Rates"**

CAT

| | | | | | |
|---|---|---|---|---|---|
| 55% | 52% | 48.5% | 40% | 33% | 28.75% |

**"Good Rates"**

CAT with reliefs

| | | | | | |
|---|---|---|---|---|---|
| 25% | 19% | 12.5% | 10% | 3.3% | 0% |

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# CAT – The Basics

| CAT Thresholds* | € |
|---|---|
| Group (a) – Child | 335,000 |
| Group (b) – Relation | 32,500 |
| Group (c) – Other | 16,250 |
| *Group thresholds effective from October 2019 | |

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# CAT – The Reliefs

| CAT Reliefs | Relief |
|---|---|
| Business Property Relief | 90% |
| Agricultural Relief | 90% |
| Dwelling House Exemption (limited application, inheritances only) | 100% |
| CGT Same Event Credit (two year holding) | 100% |

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# CAT – The Basics

- Current CAT Thresholds – Use all available thresholds where possible.
- Thresholds of grandchildren & "in laws" could be used.
- Small gift exemption of €3,000 – many individuals use the annual exemption to make €3,000 gifts to family members.
- Remember – CAT is payable by the successor. It won't bother the parent!
- Ensure that the next generation "buy-in" to the plan – they have to pay the tax after all.

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# Case Study Cont'd

**What use can John & Mary make of the reliefs to tax efficiently pass on their assets to their family?**

- I would target the Farm, the farmhouse and the Business for a succession plan.
  - ✓ Retirement Relief on the Farm and the Business.
  - ✓ Agricultural Relief on the Farm and Business Relief on the business.
- Up to changes in Finance Act 2016, I would probably target Section 86 Dwelling House Exemption on house transfers – however, very limited benefit here.
- **However, before we talk about a plan for those assets, we need to "protect" Michael. Asset protection is the order of the day when it comes to Michael.**

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# Case Study – The Advice

- John & Marys' No. 1 priority was to protect **Michael**.

## What is the solution?

- I advise John & Mary to prepare a will whereby assets would be left to a discretionary trust ultimately for Michael's benefit.
- They decide on a trust fund of €1m. The trust would only come into being on the later of their two passings i.e. their will would create the trust.
- The trust would include Michael and a charity as beneficiaries (Laffoy precedent).
- The trust fund would ultimately pass to the family on the passing of Michael (or go to charity if they wish).
- Catherine appointed trustee.

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# Case Study – The Advice

## The Result?

1. No CAT for Michael as he would not be beneficially entitled in possession to the assets until appointments are made by the trustees.

2. No DTT as it is "exclusively" for Michael's benefit (Laffoy Precedent).

3. Preservation of Michael's State Benefits.

4. Preservation of wealth.

5. Finally, and importantly, peace of mind for John & Mary that they know Michael is catered for.

# Case Study – Schedule of Assets

| Asset | Beneficiary | Value |
|---|---|---|
| **Principal Residence** | **Catherine** | **€700,000** |
| **Farm (200 acres)** | **Catherine** | **€2,000,000** |
| Family Business (shares) | Thomas | **€4,500,000** |
| Pension Fund | Michael | **€1,000,000** |
| Rental Properties (x3) | Eoin/Michael | **€1,500,000** |
| Cash & Investments | ????? | **€1,000,000** |
| | | |
| **Total Assets** | | **€10,700,000** |

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# Case Study – The Advice

- We now turn to the farm and the house aimed at **Catherine**.

- John & Mary's PPR is a substantial home and one that is too big for them. They are anxious that Michael will remain in the home throughout his lifetime. However, they need to balance this with their wish to ensure that the house remains in the family (and the farm).

- Tax is therefore an important consideration.

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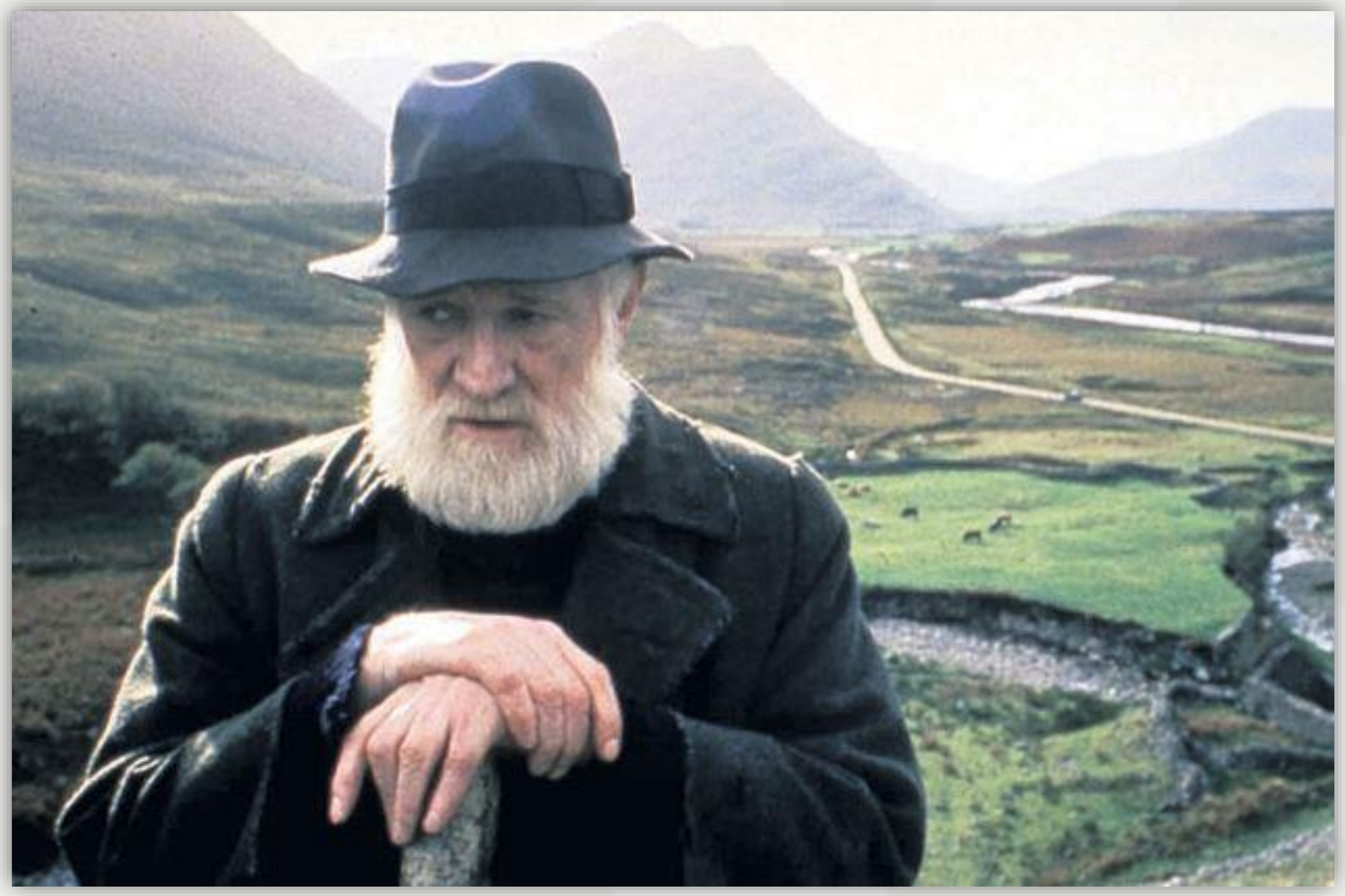
# Case Study – The Advice

- John & Mary indicate that Catherine has mentioned that she would like to live in the house in the long run and ultimately would need to move into the house to care for Michael in the event of John & Mary passing away. As Catherine's husband is a farmer, there is a logic to this.

- The decision is made to transfer the house and lands to Catherine by way of gift. However, rights of residence are reserved for John, Mary & Michael.



Bull McCabe

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# Agricultural Relief

- Is this only applicable to farmers?
- Is it of any use to individuals residing in urban areas?
- Cash of €1m – CAT of €330,000
- Land worth €1m – CAT of €33,000
- Converting "cash" into land – possible reduction of 90% for CAT purposes.
- Land can be leased to an active farmer.
- Conditional gift of cash.

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# Case Study – The Advice

- We verify that all conditions for the various reliefs are satisfied.
- Catherine transfers assets to her husband to ensure that she satisfies 80% farmer test for Agricultural Relief purposes.
- Catherine agrees to "lease" the farm to her husband to ensure that she satisfies the "active farmer" test.
- We get comfortable that the dwelling house is a "farmhouse" for Agricultural Relief purposes (being a house that is of a "character that is appropriate to the land").
- Therefore, Agricultural Relief should be available to Catherine thereby reducing the value of the land & house for CAT purposes from €2.7m to €270,000.
- No CGT would arise for John as he satisfies conditions for Retirement Relief.

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# Summary – Farm Transfer

| Tax | Liability | Comments |
|---|---|---|
| CGT | € - | Due to Retirement Relief |
| CAT | € - | Due to Agricultural Relief<br><br>Gift of €270,000 below CAT threshold of €335,000 |
| Stamp Duty | € 7,000 | House |
| Stamp Duty | €20,000 | Land (Consanguinity Relief) |
| **Total Tax** | **€27,000** | |

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# Case Study – Schedule of Assets

| Asset | Beneficiary | Value |
|---|---|---|
| Principal Residence | Catherine | €700,000 |
| Farm (200 acres) | Catherine | €2,000,000 |
| **Family Business (shares)** | **Thomas** | **€4,500,000** |
| Pension Fund | Michael | **€1,000,000** |
| Rental Properties (x3) | Eoin/Michael | **€1,500,000** |
| Cash & Investments | ????? | **€1,000,000** |
| | | |
| **Total Assets** | | **€10,700,000** |

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# Case Study – The Advice

- John & Mary both agree that **Thomas** is the successor.
- As Thomas is in his 30s, he needs to get control over his own destiny. I also explain that it would be a good time to transfer the business from a tax perspective.
- I explain that if they wait until they reach 66, there are potentially adverse tax consequences for John & Mary (as Retirement Relief is capped).
- I examine the balance sheet of the Company and note that there is surplus cash on the balance sheet.
- I explain that there is the ability to extract that cash "tax-free" as part of a succession plan.
- We therefore put a share succession plan in place.

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# Case Study – The Advice

**Step 1** John & Mary transfer 67% of their shares in the Company to Thomas by way of gift.

**Step 2** The Company redeems John & Mary's shares in the Company for market value consideration of €1.5m.

**Result**

- ☑ Thomas has 100% control of the Company
- ☑ John & Mary have €1.5m cash for their retirement.

# Step 1 – Summary of Taxes

| Tax | Liability | Comments |
|---|---|---|
| CGT | € - | Due to Retirement Relief under Section 599 TCA 1997 |
| CAT | € - | Due to Business Property Relief (90% reduction in shares from €3m to €300K).<br>Gift of €300,000 below CAT threshold of €335,000 |
| Stamp Duty | € 30,000 | 1% (possibly less by applying discount factor to shares) |
| **Total Tax** | **€ 30,000** | |

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# Step 2 – Summary of Taxes

| Tax | Liability | Comments |
|---|---|---|
| CGT | € - | Due to Retirement Relief under Section 598 TCA 1997<br><br>Share Buy-back relief (subject to conditions) |
| CAT | € - | No Gift |
| Stamp Duty | € - | No stampable instrument |
| **Total Tax** | **€ -** | |

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# Case Study – The Advice

- What about **Eoin**?
- John & Mary consider transferring one of the rental properties to Eoin. However, base cost of the properties is low and therefore CGT at 33% would arise if the transfer is made.
- They decide to leave the houses to Eoin in his will.
- Tax efficient will.
- They can gift €335,000 immediately to Eoin.
- If Eoin "buys in" to a plan to save CAT, he could save more e.g. if Eoin sets up his own IT business (BPR).

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# Case Study – Schedule of Assets

| Asset | Beneficiary | Value |
|---|---|---|
| Principal Residence | Catherine | € - |
| Farm (200 acres) | Catherine | € - |
| Family Business (shares) | Thomas | € - |
| Pension Fund | Michael | **€1,000,000** |
| Rental Properties (x3) | Eoin/Michael | **€1,500,000** |
| Cash & Investments | Trust/Residue | **€2,500,000** |
| | | |
| **Total Assets** | | **€5,000,000** |

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# Case Study – Remaining Assets

| Asset | Value | Tax |
|---|---|---|
| Pension Fund | €1,000,000 | €300,000 |
| Cash & Investments (Trust Fund) | €1,000,000 | € - * |
| * Retained in trust until Michael's passing | | |
| Rental Properties (x3) | €1,500,000 | |
| Investments | €1,500,000 | |
| Eoin's Threshold | (€335,000) | |
| **Taxable** | €2,665,000 | €879,450 |
| **Total Tax on Remaining Assets** | | €1,179,450 |

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# Case Study – The Advice

**John wants to go further – Tax on Remaining Assets of €1,179,450 still too high!**


- Pension / ARF
- Automatic 30% tax
- No planning here - €300,000 will be payable – John accepts that
- Down to €879,450……..

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# Case Study – The Advice

- **8 grandchildren:** They each have a CAT threshold of €32,500. However, when the small gift exemptions are added to it, the threshold is €38,500.

- I suggest making provision in their will for cash benefits of €32,500 or gifting €38,500 (saving of €101,640).

- In-laws (x 2) – gift of €19,250 X 2 – CAT saving of €12,705.

- Small gifts of €3,000 X 10 – Annual CAT savings of €9,900.

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# Remaining Assets

**Down to circa €700,000......................**

- Section 72 policy? A financial consideration.
- Put more into Michael's trust fund? Defers tax at worst.
- Other possibilities?
- Gift money to Catherine on condition she invests in land?
- Eoin, any interest in business? BPR?

- If CAT has to be paid on cash, investments, rental properties – is that the end of the world? Cash is there to pay it.

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# Case Study – The Advice

- John still wants to go even further!

- However, I tell him to go away, spend his money and enjoy himself.

- Mary is delighted ...........

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# Conclusions

- It is important to have a plan.
- Succession and estate planning go hand in hand.
- Don't let tax dictate the plan – tax is important, but it is not everything.
- Assess the clients wishes and assess clients financial security. Have they enough? If they have, consideration can be given to transferring assets.
- Get all details – family, circumstances, assets etc.
- Focus on key assets – are reliefs relevant?
- CAT inevitable at some level - is that the end of the world?
- **Get buy-in of next generation – it's their tax bill.**

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# Our Team

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# What do we do?

Corporate Restructuring

Mergers & Acquisitions

Succession Planning

VAT on Property

Revenue Audits

Estate & Inheritance Planning

Tax Planning

Tax Appeals

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# Any Questions?

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# Thank you.

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# Disclaimer

This report is confined to the Irish tax implications for the transaction and does not address any other tax or non-tax matters.

Our report is based on our interpretation of what we consider to be the relevant Irish tax law and Revenue practices as of the date of this presentation. It is understood that we have no responsibility to update this report for any changes in tax law or Revenue practices which occur after today's date. In common with any complex transaction such as this, where the interpretation of legislation is involved, no guarantee is given that the Revenue authorities or a court will not take different opinions to those expressed in this presentation.

Our opinion is based on our understanding of the transaction as outlined above and how the transaction is to be implemented and administered. Clearly, any failure to implement the transaction in the manner intended and any change to the proposed investment structure could have different tax consequences and/or adverse tax consequences.

Our report is based on the background documentation and property valuations provided and we have not enquired into the accuracy or otherwise of the information set out therein.

This report is solely for the use of the parties to the transaction and their advisers, and solely for the purposes of this transaction. It may not be given to or relied upon by any other party.

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