

## **INCREASING TAXES – TIME TO REVIEW YOUR WILL?**

There are many occasions in a person's lifetime when they should either make or review their Will, such as when you buy a home, or get married, or become a parent, or upon the death of a child who has children or when there is a significant change in the tax environment. While many people are aware of the immediate effect of Income Tax increases from their diminishing pay packets, it is less widely known that more and more people are paying Inheritance Tax arising on the death of a parent or other loved one. In the not too distant past, Inheritance Tax tended only to affect the Beneficiaries of those who might be considered to be relatively affluent, but now such tax is increasingly being collected from the "squeezed middle".

### Dramatic Increase in Inheritance Tax

In early 2009, a son or daughter could inherit €542,544 tax free from a parent or €54,254 from an aunt or uncle. In 2013, a child can now only inherit the vastly reduced sum of €225,000 tax free from a parent and €30,150 from an aunt or uncle. The Inheritance Tax rate on the 1<sup>st</sup> January 2009 was merely 22%, whereas in 2013, it is 33%. When one considers that the Deceased person's home is fully liable, it is not that difficult to cross the €225,000 threshold to leave the inheriting son or daughter with a sizeable Inheritance Tax bill.

### How Does Inheritance Tax Work?

In simple terms, Inheritance Tax, also known as Capital Acquisitions Tax, works in the following way. Firstly, it is a tax on the Beneficiary, i.e. the person getting the inheritance; it is not a tax on the Estate of the Deceased person. Secondly, the tax free threshold depends on the relationship between the Beneficiary and the Deceased person. These categories of relationship are broken down into three groups, known as Group Thresholds. The first being Group A, which in broad terms means a son or daughter, the current

threshold being €225,000; Group B, being a brother, sister, niece, nephew or grandchild of the Deceased, the current threshold being €30,150; or Group C, any relationship other than Group A or B, the current threshold being €15,075.

To take an example, Tom inherited a home worth €200,000 and cash of €100,000 on the death of his father in January 2013. Assuming that Tom has no prior gifts or inheritances from his parents, his taxable inheritance will be €75,000 being €300,000 from which he can deduct Group Threshold A of €225,000. He will pay tax at 33% on €75,000, being €24,750.

To take another example, Paul inherited €10,000 on the death of his cousin in January 2013. Some weeks later his brother-in-law died and he inherited €10,000 from him. Paul's taxable inheritances in 2013 will be €20,000 from which he can deduct Group Threshold C of €15,075. He will pay tax at 33% on the €4,925, being €1,625.25.

#### Effect of Prior Gifts and Inheritances

What is even less well understood is that when calculating the taxable inheritance to which the Group Threshold (tax free element) applies, the Revenue Commissioners will have regard to all prior gifts or inheritances that the Beneficiary received since the 5<sup>th</sup> December 1991 within the same Group Threshold. This is known as "aggregation" and works as follows: Mary received an inheritance of €150,000 from her father on the 1<sup>st</sup> January 1992 and on the 1<sup>st</sup> January 2013, she received a further inheritance from her mother of €150,000. As her combined inheritance from her parents is €300,000, she will pay tax at a rate of 33% on €75,000, being €24,750, being the amount which her aggregated inheritances exceed her current Group Threshold.

## How Can Changing your Will Help?

### 1. Estate Planning

It may be possible to implement some simple and fully lawful measures to minimise the amount of tax that might otherwise be payable by your Beneficiaries. This can be assessed in the context of reviewing your Will and is known as “Estate Planning”.

### 2. Splitting Inheritance

Some of the simpler methods would be to distribute the bequests under your Will to as wide a body of Beneficiaries as possible as the tax free amount or Group Threshold is individual to each Beneficiary. Therefore, it might be possible to divide a bequest originally intended for one child to the child’s spouse and children to minimise the effects of Inheritance Tax. A bequest to a sister could perhaps be divided between her and her spouse and children.

### 3. Reliefs

Advice should be taken as to whether any of the usual Inheritance Tax Reliefs might apply to your intended Beneficiaries, such as Agricultural Relief, Business Relief or Favourite Nephew / Niece Relief. If one can avail of these Reliefs, it will usually have the effect of taking the inheritance out of the tax net or at worst greatly reducing the tax liability. Even if none of those Reliefs were to apply today, appropriate steps could be taken by the person making their Will or perhaps by the intended Beneficiary to ensure that they would meet the required tests to avail of those Reliefs upon your death in the future.

### 4. Agricultural Relief for Non-Farmers

For instance, you don’t need to be a farmer or even to own a pair of wellington boots to avail of Agricultural Relief. It is purely an asset based test conducted after the Beneficiary gets their inheritance. An inheritance of cash that is specified to be used for the purchase of agricultural property is also considered agricultural property for meeting the test.

## 5. Exemptions

Consideration should be paid to whether any of the Inheritance Tax exemptions (which remove the inheritance outright from being taxed) might apply to your intended Beneficiaries, such as dwellinghouse exemption, heritage property exemption, certain securities exemption, bequests to charities, inheritance taken by a parent from a child, certain policies of insurance and qualifying expenses of incapacitated persons.

### Small Gifts Exemption

In light of the increasing threat of taxation, it is worthwhile revisiting the Small Gifts Exemption whereby a Beneficiary is entitled to receive a gift from a living disponent (as opposed to an inheritance) in value of up to €3,000 in any year between the 1<sup>st</sup> January and the 31<sup>st</sup> December. For example, this means that a son or daughter could receive up to €3,000 from each parent in any one year, i.e. a gift up to €6,000 worth without triggering any tax or such sum being taken into account in any subsequent aggregation of prior gifts or inheritances referred to above. Equally, a grandparent might also consider using this Small Gift Exemption to not only benefit their children, but perhaps also their grandchildren by use of this annual exemption payment. Of course a parent or grandparent in these circumstances needs to be mindful of leaving themselves with sufficient assets to provide for themselves in old age, rather than dissipating all of their assets by way of gift.

### Pitfalls and Opportunities

Other complicating factors, such as having assets outside of the jurisdiction or perhaps having been born or having spent significant periods of time outside of the country may give rise to potential pitfalls, but on occasion may provide some tax planning opportunities. These need to be teased out when reviewing your Will in the context of Estate Planning. It would be foolish to believe that Estate Planning is to preserve the “well off”.

Fergal McManus  
Morgan McManus Solicitors  
The Diamond  
Clones  
Co. Monaghan  
Email: [fmcmanus@morganmcmanus.ie](mailto:fmcmanus@morganmcmanus.ie)  
Ph: 047 51011

For further articles by Fergal McManus on Wills, Estate Planning, Capital Taxes, Commercial Law and Property issues, including Cross-Border related matters, visit [www.morganmcmanus.com](http://www.morganmcmanus.com)