Overview

The purpose of this seminar is to update members on topical developments and planning ideas for high net worth individuals and owners of family businesses.

The following are the main topics covered in this seminar:

1. Estate planning

2. Case study – transfer of and cash extraction from family company

3. Use of trusts in estate and tax planning

4. Loan losses

5. Tax rates and levies

6. Tax on investments in 2009

7. Further issues relating to losses

8. Dealing with Revenue in 2009 and beyond

Estate Planning - 2009 the year of the asset transfer?

We have noticed an increasing tendency on the part of clients, particularly ultra high net worth individuals, to transfer assets to the next generation in 2009. There are a number of different reasons for this trend. The following are in our view the main reasons to transfer assets during 2009:

1. It may be the case that asset values are at a historically low level.

2. The expectation that capital tax rates will increase in the future.

3. Tax reliefs exist today that have an uncertain future.

The result of a combination of the above is that tax costs on a transfer in the future could be significantly higher than at present.

I have dealt with all of the above in further detail below.

1. Asset values are at a historically low level

Firstly, some clients are taking the view that with the very substantial reductions in property prices and collapse in equity prices during 2008/2009, asset values are at a historic low. Some clients have taken the view that this provides them with a unique opportunity to transfer assets to the next generation and allow growth to accumulate at the level of the next generation rather than with themselves.

2. Expectations that capital tax rates will increase in the future

CGT and CAT rates have been at a historically low level since 1997/1999 but have started to increase again. The following table illustrates the decreases in the rates of CGT and CAT from 1996 and the increases since 2008.

Year	CGT	CAT
1996	40%	40%
1997	20%	40%
1999	20%	20%
2008	22%	22%
2009	25%	25%
2010	??	??

It is clear from the above table that when economic conditions were favourable both CGT and CAT rates were reduced significantly. Now that economic conditions are not favourable the rates of both of these taxes are increasing. Also, CGT and CAT rates, in particular CAT, are low in Ireland relative to some other major jurisdictions. It is quite possible that we will see further increases in the rates of CGT and CAT, possibly to 30% or more, in the Budget in December 2009.

The following two examples illustrate the tax saving that can be achieved if a commercial property is transferred to a child in 2009 rather than in ten years time.

Investment asset transfer example

Example	EUR
Value of commercial property in 2009	500,000
CGT cost of transfer	Nil
Stamp duty cost of transfer	15,000
Gift tax cost of transfer (25%)	125,000
Total	140,000

Investment asset transfer example (cont)

	EUR
Property value in 2019	1,500,000
CGT cost of transfer (30%)	150,000
Stamp duty cost of transfer (rate same)	45,000
Gift tax cost of transfer (30%)	300,000
	495,000
Cost of transfer in 2009	140,000
Total saving	**355,000**

These calculations are completed based on the following assumptions:

(a) The recipient's parent to child class A threshold has been fully utilised.

(b) The rates of CGT and CAT increase to 30% by 2019.

(c) The rate of stamp duty stays the same at 6%, with consanguinity relief applying to reduce that rate to 3%.

(d) The base cost of the commercial property is EUR1m.

(e) The CGT base cost of the asset and other factors result in a CGT cost of the transfer in 2019 of EUR150,000.

(f) Credit for the CGT of EUR150,00 is available against CAT, thereby reducing CAT to EUR300,000.

(g) The recipient has not been in a position to utilise his annual gift allowance of EUR3,000.

The opportunity to transfer investment assets now rather than in the future would be relevant for many assets including the following:

- Long term private property
- Syndicated property investments
- All assets that have a low or nil value

3. Expectation that tax reliefs exist today that have an uncertain future

The Minister for Finance stated very clearly in his Budget speech on 7 April 2009 that:

> "it is the intention of the Government to continue to remove unnecessary reliefs and shelters from the tax system in successive budgets."

This is a very clear statement from the Minister that certain tax reliefs that are deemed unnecessary will be removed in the forthcoming budget.

The Commission on Taxation recommended a reduction in business relief and agricultural relief from 90% to 75% and the imposition of a EUR3m cap on the amount of relief that can be claimed. The Commission also recommended that in order to retain agricultural relief there should be a condition of the relief that farms should be owned and operated as a farm for a period of six years after the transfer.

In addition to these recommendations in relation to business relief and agricultural relief the Commission also recommended that CGT retirement relief on the transfer of qualifying family businesses from a parent to a child (section 599 TCA 1997) should

be limited so that it applies to asset values up to EUR3m only. At present there is no cap on relief under section 599 TCA 1997.

The above recommendations in relation to business relief, agricultural relief and CGT retirement relief would have a very significant impact on transfers of business assets to the next generation, particularly where relief in excess of EUR3m is being claimed.

It is not a major surprise that the Commission on Taxation recommended the reduction in business relief and agricultural relief to 75% and the imposition of a cap on business relief, agricultural relief and retirement relief.

Agricultural relief and business relief rates have historically been much lower than the current rate of 90% and were also subject to caps on the amount of relief that can be claimed. The following table illustrates the rates applicable from 1994 (the year business relief was introduced) and the relevant caps since 1994. It should be noted that, not unlike the actual rates of CAT and CGT as dealt with previously, the reliefs have increased as the economy became more prosperous.

Year	Agricultural relief		Business relief	
	Rate	Cap EUR	Rate	Cap
1994	70%	150,000	25%/30%	None
1995	50%	90,000	50%	None
1996	75%	None	75%	None
1997	90%	None	90%	None
2010	?	?	?	?

Case study

I have used a case study throughout this seminar to illustrate various points on the topics covered. The facts are as follows:

Fred is a client in his 70s who is widowed and has four children as follows:

(a) Simon is his eldest son and works in a trading business that Fred has run for over 35 years, Fred Trading Limited. It is Fred's intention to leave the business to Simon as Simon is a director of Fred Trading Limited and

currently the person with prime responsibility for managing and directing the business.

(b) Pierre is Fred's youngest son and currently lives abroad in France.

(c) Sean is his second eldest son and has no involvement in the business. Sean has been married to Lucy for the previous ten years and has three children with Lucy.

(d) Mary is Fred's only daughter, works as a schoolteacher and has no involvement in the business.

Fred's assets consist of the following:

Assets	**EUR**
100% Fred Trading Limited	10m
Irish quoted shares	4m
Cash/bonds (Irish)	5m
Principal residence	1m
Irish investment property	10m
Total	**30m**

The assets of Fred Trading Limited are made up trading assets of EUR9m and cash of EUR1m.

Fred has a desire to retire from Fred Trading Limited as some point over the next five years and transfer all or a portion of his shares to Simon.

If the recommendations set out in the Commission on Taxation Report in relation to business relief, agricultural relief and retirement relief were implemented the following calculation shows the additional tax that would be payable on the gift of Fred Trading Limited to Simon (market value of EUR10m).

Commission on Taxation

	Current position	Commission recommendations
	EUR	**EUR**
Market value of Fred Trading Limited	10m	10m
Relief	(9m)	(3m)
CAT @ 25%	0.25m	1.75m
CGT @ 25% **(Note)**	0	(1.75m)
CAT	0.25m	0
Total tax	**0.25m**	**1.75m**

Note: assumes no base cost and full business and retirement relief

These calculations are based on the following assumptions:

1. Full business/agricultural relief applies.

2. Credit is available for CGT against CAT and there is no claw back.

3. No class threshold or annual gift allowance is available to the beneficiary.

4. The annual CGT allowance is not available.

Fred has also expressed his desire to extract some cash from the company in a tax efficient manner. The gift of shares to Simon provides a perfect opportunity to achieve this. Following your advice the following steps are implemented:

1. A re-organisation takes place splitting Fred's shares into voting shares, which have no entitlement other than to vote, and equity shares which have all rights to dividends and assets on a winding up or otherwise.

2. Fred gifts 90% of his voting shares and 94.5% of his equity shares to Simon.

3. All of the above transactions take place based on current tax law.

4. Some time in mid to late 2010 Fred sells his remaining voting and equity shares back to Fred Trading Limited for EUR750,000.

5. Fred resigns as a director/employee of the company and hands over the entire management and running of the business to Simon. From this point on Fred has no real involvement in the business of Fred Trading Limited.

The following is a summary of relevant tax issues:

Fred has retained 10% of the voting shares in Fred Trading Limited and 6.9% of the equity shares in Fred Trading Limited. Revenue have produced guidelines on the split of the value of a trading company between voting rights and other rights. Based on these Revenue guidelines the attribution of 20% of the value of the company to the voting rights in the company would not be unreasonable. The value of the shareholdings held by Fred and Simon would therefore be as follows:

Shares retained by Fred:

Shares	**EUR**
10% of voting shares	200,000
6.9% of equity shares	550,000
Total	**750,000**

Shares gifted to Simon

Shares	**EUR**
90% of voting shares	1.80m
93.1% of equity shares	7.45m
Total	**9.25m**

No CGT is payable by Fred on the gift of shares to Simon in 2009 as full CGT retirement relief applies (section 599 TCA 1997). Fred satisfies all the conditions to qualify for retirement relief under section 599 TCA 1997.

The EUR1m of cash in the business will not dilute the quantum of retirement relief available as cash is not a chargeable asset for CGT purposes provided it is held in Euros.

The following is a calculation of the CAT payable by Simon:

Shares	**EUR**
Market value of shares received	9,250
Business relief at 90%	(8,325)
Taxable value	925,000
CAT at 25% (assumes no threshold)	231,000

The above assumes that full business relief is available, in particular that the cash qualifies as a business asset. The above also assumes that the annual gift allowance is not available and ignores any deduction for stamp duty.

Stamp duty of 1% would also be payable on the gift of the shares.

The following is a tax analysis of the buyback of shares from Fred.

The buyback will not be a distribution to Fred provided the provisions of sections 176 to 186 TCA 1997 are satisfied. These provisions provide for a buyback of shares in a qualifying trading company to be a treated as a capital receipt in the hands of the shareholder rather than a distribution. There is a process for obtaining prior approval from Revenue that the trade benefit test set out in section 176 TCA 1997 is complied with and Revenue have produced guidelines setting out circumstances in which they believe the trade benefit test will be satisfied. Revenue generally stick rigidly to these guidelines. The buyback of shares from Fred would in my view satisfy these Revenue guidelines and the trade benefit test would therefore be satisfied.

No CGT will be payable on the buyback as Fred would be entitled to full retirement relief under section 598 TCA 1997. Again, the cash would not dilute the quantum of retirement relief available.

It is possible to arrange the buyback so that no stamp duty is payable on the buyback.

We should be wary of section 817 TCA 1997 in the context of the buyback of shares from Fred. Section 817 TCA 1997 is a specific anti-avoidance provision aimed at preventing shareholders in close companies from avoiding or reducing a charge to

income tax by extracting money from the company without paying a dividend. The primary purpose of section 817 TCA 1997 is to prevent artificial arrangements being put in place by shareholders whereby they would sell shares that they own in a company and pay CGT on that sale without substantially reducing their interest in that company. Section 817 TCA 1997 was amended in Finance Act 2006 to include the interest or interests in the trade or business of connected persons when determining whether the interest of a shareholder is significantly reduced for the purposes of section 817 TCA 1997 (section 817(1) (ca) TCA 1997). The effect of the Finance Act 2006 amendments to section 817 TCA 1997 is that Revenue could possibly claim that Fred, in the above example. has not substantially reduced his interest in Fred Trading Limited after the buyback because at that point in time Simon, who is connected to Fred, owns 100% of the business and therefore taking Fred and Simon's interests together, there has been no significant reduction (or in fact any reduction) for section 817 TCA 1997 purposes. This would be a particularly harsh result but something that Revenue could seek to argue depending on the circumstances. In our view, if the gift to Simon was followed immediately by the buyback then Revenue could very well argue that section 817 TCA 1997 applies. Also, if the above sequence of events was pre-arranged Revenue could also argue that section 817 TCA 1997 applies. As against this the taxpayer (Fred in this example) could argue that the disposal was made for bona fide commercial reasons and was not part of a scheme or arrangement the purpose or one of the purposes of which was the avoidance of tax (section 817(7) TCA 1997). Serious consideration should be given to the potential application of section 817 in these circumstances, although in our view it seems inequitable that section 817 should apply in these types of situations as in our view it was not intended that the 2006 Finance Act amendments were brought in to catch these types of situations where there is a genuine gift from father to son and a genuine buyback.

Use of trusts in tax planning

Trusts are often avoided by practitioners as an estate or tax planning device as they are often regarded as complicated, unwieldy and subject to special taxes such as discretionary trust tax and the income tax surcharge. However, trusts can be a very useful mechanism in tax and estate planning as illustrated by the following commentary.

Generation skipping trusts

I will revert to the original case study to illustrate the benefits of a trust that we have described as the “generation skipping trust”.

Your client, Fred, is in his 70s and his son, Sean, is aged 40. If Fred were to die in 2009 Sean could receive an inheritance of EUR434,000 without paying inheritance tax and the balance would be taxed at 25%. This would cost approximately EUR2.4m on an estate worth EUR10m. This is a very significant tax cost and the question must be asked if there is a better way of arranging Fred’s estate planning.

One question that should be asked is if Fred has any grandchildren. If he does then it could be suggested to Fred that he leaves an amount to his son Sean up to the current parent to child threshold of EUR434,000 with the balance being left to a trust for Fred’s grandchildren.

The main advantage of this type of a generation skipping trust is that rather than Sean paying CAT of 25% on the excess over EUR434,000 and Sean then leaving his estate to his children resulting in a further CAT liability of 25%, the additional CAT liability could be avoided by Fred bequeathing the balance of his estate directly to a trust for his grandchildren. These types of trusts set up for grandchildren are often avoided as the discretionary trust tax (DTT) costs can be quite high. However, even factoring in this DTT, because there is a significant inheritance tax saving the overall tax costs should be significantly lower, provided assets are appointed out of the trust within a certain period of time.

The following table shows the level of tax payable in two scenarios. Column 1 shows the situation where no discretionary trust is used and there is therefore an additional CAT charge. Column 2 illustrates the level of tax payable if a generation skipping discretionary trust is used and DTT is payable.

Illustrative table assuming growth rate of 5% per year

No trust		Generation skipping trust	
Start with	**1,000,000**	**Start with**	**1,000,000**
less CAT @ 25%	750,000	less DTT at 6%	940,000
Value end year 1	787,500	Value end year 1	987,000
		less DTT at 1%	977,130
Value end year 2	826,875	Value end year 2	1,025,987
		Less DTT at 1%	1,015,727
Value end year 3	868,219	Value end year 3	1,066,513
		Less DTT at 1%	1,055,848
Value end year 4	911,630	Value end year 4	1,108,640
		Less DTT at 1%	1,097,554
Value end year 5	957,211	Value end year 5	1,152,432
		Less DTT at 1%	1,140,907
Value end year 6	1,005,072	Value end year 6	1,197,953
		Less DTT at 1%	1,185,973
Value end year 7	1,055,325	Value end year 7	1,245,272
		Less DTT at 1%	1,232,819
Value end year 8	1,108,092	Value end year 8	1,294,460
		Less DTT at 1%	1,281,515
Value end year 9	1,163,496	Value end year 9	1,345,591
		Less DTT at 1%	1,332,135
Value end year 10	1,221,671	Value end year 10	1,398,742
		Less DTT at 1%	1,384,755
Value end year 11	1,282,755	Value end year 11	1,453,992

		Less DTT at 1%	1,439,452
Value end year 12	1,346,892	Value end year 12	1,511,425
		Less DTT at 1%	1,496,311
Value end year 13	1,414,237	Value end year 13	1,571,126
		Less DTT at 1%	1,555,415
Value end year 14	1,484,949	Value end year 14	1,633,186
		Less DTT at 1%	1,616,854
Value end year 15	1,559,196	Value end year 15	1,697,697
		Less DTT at 1%	1,680,720
Value end year 16	1,637,156	Value end year 16	1,764,756
		Less DTT at 1%	1,747,108
Value end year 17	1,719,014	Value end year 17	1,834,463
		Less DTT at 1%	1,816,119
Value end year 18	1,804,964	Value end year 18	1,906,925
		Less DTT at 1%	1,887,855
Value end year 19	1,895,213	Value end year 19	1,982,248
		Less DTT at 1%	1,962,426
Value end year 20	1,989,973	Value end year 20	2,060,547
		Less DTT at 1%	2,039,942
Value end year 21	2,089,472	Value end year 21	2,141,939
		Less DTT at 1%	2,120,519
Value end year 22	2,193,946	Value end year 22	2,226,545
		Less DTT at 1%	2,204,280
Value end year 23	**2,303,643**	**Value end year 23**	**2,314,494**

The above calculations do not calculate CAT on the death of Sean in the context of column 1 or on the appointment of assets from the generation skipping trust in the context of column 2. However, on the basis that the CAT charge on the death of Sean is going to be greater than the CAT charge on the appointment from the discretionary trust (based on the above figures) then the comparison is valid.

The following table illustrates the level of tax saving involved if assets are left to a generation skipping trust for grandchildren who inherit at age 30, depending on the age of the grandchild when Fred died. This table is based on the calculations set out in the above comparative table.

Grandchild inherits age 30

Age of grandchild when grandfather died	EUR1m in trust for	Saving if 5% growth EUR	Saving if 7% growth EUR
12	18 yrs	102K	143K
15	15 yrs	139K	184K
20	10 yrs	177K	214K
25	5 yrs	195K	215K

In a situation where Fred owns an estate worth EUR20m and decides to transfer say EUR10m to his son Sean and EUR10m to a generation skipping trust for his grandchildren who will inherit at age 30, the tax saving will be between EUR1m and EUR2.15m, depending on the level of growth and other factors.

Postponing CAT Charge – warehouse trusts

Discretionary trusts can be a very useful vehicle to assist with planning to mitigate CAT on inheritances.

The charge to CAT arises when a person becomes a beneficiary entitled in possession to a benefit (section 5 CATCA 2003 and section 10 CATCA 2003). If an individual bequeaths a portion or all of his assets to a discretionary trust then CAT is postponed. The reason for this is that there is no CAT charge until assets are appointed from the discretionary trust or somebody otherwise becomes beneficially

entitled in possession to the assets held by the trustees. This can create significant opportunities to plan to mitigate CAT. I have called these types of trusts “warehouse trusts” because the assets bequeathed by the deceased are warehoused until an appropriate plan is put in place.

The following examples illustrate how this planning can operate in practice.

> ***Example 1***
> Assume that Fred has become neither resident nor ordinarily resident in Ireland. However, he holds Irish property. Three out of his four children are resident in Ireland. Fred executes a Will leaving his assets to a discretionary trust. On Fred’s death these assets pass to the discretionary trust. His children will not be subject to CAT at this point as they have not become beneficially entitled in possession to any of the assets held by Fred at the date of his death.
>
> The administration of Fred’s estate is completed and the relevant portion of his estate passes to the discretionary trust. Within a short period of time a portion of the Irish assets are sold by the trustees and the sale proceeds are transferred outside of Ireland. At this point the sale proceeds do not constitute an Irish asset for CAT purposes. These non Irish assets can therefore be appointed to Pierre (who is neither Irish resident nor ordinarily resident) without him incurring a CAT liability.
>
> Fred could also bequeath the assets intended for his Irish resident children to the trust if there was any prospect of them losing their Irish residence status after his death. In this situation the trustees can postpone the appointment of non Irish assets to Fred’s Irish resident children until such time as they are not resident in Ireland for CAT purposes thereby avoiding CAT. There may be foreign tax issues that would also need to be considered here.

The above example shows that a warehouse trust can be used to mitigate CAT for the beneficiaries of a non resident disponer.

Tax advisers should be conscious of discretionary trust tax in the above example. Discretionary trust tax (DTT) would be payable on the Irish assets held by the discretionary trust, subject to planning being put in place to mitigate such DTT.

There is a potential opportunity to obtain a refund of 50% of the initial 6% DTT charge under section 18 CATCA 2003.

No DTT charge will arise on the non Irish assets held by the trust. The charge to DTT arises by deeming the trustees of the trust to have taken an inheritance on the relevant date (section 15(1) CATCA 2003). Section 11 CATCA 2003 sets out the rules for determining when a charge to CAT arises in relation to inheritances. Section 11(2) provides that where the date of the disposition is on or after 1 December 1999 a charge to CAT arises where:

(a) The disponer is resident or ordinarily resident in the State at the relevant date of the disposition, or

(b) The successor (not being a successor in relation to a charge for tax arising by virtue of sections 15(1) or 20(1)) is resident or ordinarily resident in the State at the date of the inheritance, or

(c) The inheritance consists of Irish situs property.

On the basis of the above no DTT will arise on the non Irish assets owned by Fred at the date of his death and passing into the discretionary trust on the basis that he is neither resident nor ordinarily resident at the date of his death (section 11(2)(a) CATCA 2003). Even if the trustees were resident in Ireland there would still be no DTT charge because a charge based on the residence of the successor is excluded by virtue of the above wording in section 11(2)(b) CATCA 2003.

Example 2

Fred owns an investment property worth EUR10m at the date of his death. Fred is resident and ordinarily resident in Ireland. Under the terms of Fred's Will he bequeaths the investment property to a warehouse trust. Within a relatively short period of receiving title to the investment property the trustees sell the investment property and reinvest EUR3m of the sale proceeds in a house that will be occupied by Fred's daughter, Mary. Mary lives in the house as her only or main residence for a period of three years. Mary does not own any other residential property. After Mary has lived in the property for a period of three years as her only or main residence the trustees appoint the house to Mary. The CAT residence exemption (section 86 CATCA 2003) is available to

Mary and therefore the receipt by her of the inheritance of the house is exempt from CAT. The CGT principal residence exemption (section 604 TCA 1997) is available to the trustees to exempt them from any CGT on the uplift in value of the house between the date of purchase and date of appointment to Mary. Also, no stamp duty is payable by Mary as there is a full exemption from stamp duty under section 30(5)(d) of the Stamp Duties Consolidation Act 1999.

Again, DTT would need to be managed in the context of the above example, and we believe that this is possible with careful planning.

Other Estate Planning

There are many other opportunities to plan to minimise taxes on the transfer of assets to the next generation. I have outlined very briefly three such opportunities below.

House Exemption - Section 86 CATCA 2003

It is still possible for a disponer to purchase a residential property personally, allow the beneficiary to occupy that property for a period of three years as their only or main residence and then gift that property to that beneficiary after three years. Provided all conditions set out section 86 CATCA 2003 are satisfied then no CAT will be payable on the receipt of that property from the disponer.

CGT will be payable by the disponer on the increase in value of that property over three years. However, many may take the view that in the current economic climate the increase over the next three years may be minimal, if any.

Stamp duty may also be payable by the donee on receipt of the property depending on the donee's status and the value of the property.

Business Relief

Planning to transfer assets to the next generation by taking advantage of business relief is a more long term and often a more complicated matter. There is a five year minimum ownership requirement prior to a gift of business property (section 94 CATCA 2003) and a minimum six year ownership requirement after the gift (section 101 CATCA 2003). Also, the business most remain and operate as a qualifying business for six years after the gift (section 101(2)(a) CATCA 2003). Therefore, while

planning with business property is possible, it is only for those intending to invest in business property over the long term.

Agricultural Relief

Agricultural property still qualifies for a 90% reduction in its taxable value under section 89 CATCA 2003. Interestingly, the requirement that the agricultural property must be situated in the State has now been removed. This leaves open the possibility of foreign property qualifying as agricultural property for the purposes of section 89 CATCA 2003. This could present interesting opportunities in certain instances.

Forestry is given special treatment for CAT purposes. A beneficiary of forestry does not have to qualify as a farmer for CAT purposes. Also, there is no claw back of agricultural relief on a sale of forestry, within the claw back period.

Principal Private Residence Trusts (PPR Trusts)

The CAT house exemption was introduced in 1999 (now section 86 CATCA 2003).

The main conditions to qualify for the house exemption are that the beneficiary has occupied the house as his only or main residence for a period of three years in advance of receiving the house and that he does not have an interest in any other residential property at that date.

The exemption can be used by individuals to buy a house for an intended beneficiary and then gift the house to that beneficiary after he has lived in the house as his only or main residence for a minimum of three years. Prior to Finance Act 2007 discretionary trusts were commonly used in order to manage the capital gains tax and stamp duty that would otherwise arise on the gift of a house to a beneficiary and also to enable a donor to retain control in certain circumstances.

Finance Act 2007 amended section 86 CATCA 2003 to include a new sub section 3A. The new section 86(3A)(c) CATCA 2003 states that the relevant property is required to be “owned by the disponer” during the three year period that the beneficiary has occupied the relevant property as his only or main residence. This presents a problem for dwellings that were owned by trusts prior to the enactment of Finance Act 2007 as it is unlikely that such dwellings would qualify for the house exemption without further planning.

Numerous solutions to the enactment of section 86(3A) CATCA 2003 have been examined by tax practitioners. I have included commentary on some suggested solutions below.

Solution 1

The safest solution that will ensure with absolute certainty that the CAT residence exemption is available to the beneficiary would be for the property to be appointed to the disponer. The disponer would then hold the property for three years during which three year period the beneficiary would occupy the property as his or her only or main residence. After this three year period has expired the residence would then be transferred by way of gift to the beneficiary.

No CAT will be payable on the appointment by the trustees to the disponer as the disponer will be taking a benefit from himself, which is exempt from CAT under Section 83(2) CATCA 2003.

No CGT will be payable on the appointment by the trustees to the disponer provided the beneficiary has lived in the property during the trusts period of ownership as the beneficiaries only main residence (section 604(10) TCA 1997.)

No stamp duty will be payable on the appointment by the trustees to the disponer provided no consideration passes from the disponer to the trustees (section 30(5)(d) Stamp Duties Consolidation Act 1999)

If solution 1 is adopted the CAT exemption under section 86 CATCA 2003 will be available. However, although solution 1 does ensure that the CAT exemption will be available it has certain draw backs.

1. The property will need to be held by the disponer for a further three years. Some disponers may not want to hold the property for a further three years for a variety of reasons. It is possible, for example, that further legislative changes could be introduced in this three year period that could limit the availability of relevant tax reliefs.

2. CGT will be payable on the increase in value from the date of appointment to the date of the gift to the beneficiary.

3. Stamp duty may be payable at the date of the gift from the disponer to the beneficiary. However, the stamp duty exemption for first time buyers may be available.

Solution 2

A solution advanced by some practitioners is to argue that if the disponer is one of the trustees of the trust, the property is "owned by the disponer". It could then be argued that the property is "owned by the disponer" for the 3 years as required by section 86 CATCA 2003. Solution 2 could be advanced as an alternative to solution 1 if the disponer was excluded as a beneficiary, could not be nominated as a beneficiary of the relevant trust, or did not for other reasons want to own the property for a further 3 years. This may be the case with certain trusts.

The term "owned by" is not used in CATCA 2003. The term "owner" is only used in conjunction with the term beneficial, which may indicate that there is a distinction between the two terms.

Legal ownership and beneficial ownership are two separate and distinct legal concepts. From a purely legal perspective a trustee of a discretionary trust does have a form of legal ownership.

The term "beneficial owner" is used in section 44 CATCA 2003. Section 44 CATCA 2003 deems a benefit to be taken by the owners of shares in a private company where an arrangement results in the market value of other shares in the company being reduced in value. This section states that a benefit is deemed to be taken by "the beneficial owner" of the related shares.

Section 44 CATCA 2003 goes on to state that "so far as the related shares in that company are held in trust and have no ascertainable beneficial owners" then the disponer of that trust is deemed to take the benefit as if that disponer was the "absolute beneficial owner" of those shares. CATCA 2003 therefore recognises that the trustees of a trust are not the beneficial owners of the shares, as would be expected. However, beneficial ownership should not be equated with ownership as they are 2 different concepts.

The term "beneficially owned by that company" is also used in section 100 CATCA 2003 in relation to business relief.

There is no other provision in CATCA 2003 which refers to "ownership" or "owned by" without referring to beneficial ownership.

Section 604(10) TCA 1997 provides that the CGT main residence exemption is available where "during the period of ownership of the trustee" the dwelling house is occupied as the only or main residence of the individual entitled to occupy it under the terms of the settlement. It is clear from UK case law that where a beneficiary is allowed to occupy a property under the terms of a discretionary trust the trustees are entitled to the exemption under section 604(10) (see *Sansom v Peay*). This is supported in a UK revenue statement of practice. This reference in section 604(10) to the period of ownership of the trustee is acknowledgement of the fact that during this period the trustee owns the trust property. Section 86(3A) states that the property must be owned by the disponer. If the disponer is the trustee then this statement in section 604(10) supports the view that a trustee is the owner of trust property.

A contrary argument is that the disponer owns the property not in the disponer's personal capacity but in his or her capacity as trustee and that this is different from the disponer owning the property free from any fiduciary duties that the trustees owe to the beneficiaries.

In conclusion, it is arguable that as section 86(3A) CATCA 2003 refers to a dwelling house 'owned by the disponer' and not to a dwelling house beneficially owned by the disponer, that ownership by a trustee could be sufficient to satisfy this requirement. This is supported by the use of the term ownership in other tax legislation. Legal title is owned by the trustee even though the trustee is not the beneficial owner.

If the disponer is one of two or more trustees then a further question is whether it is necessary for the disponer to be the sole trustee in order to be regarded as the owner for the purposes of section 86 CATCA 2003. There is nothing in section 86 CATCA 2003 that requires the disponer to be the sole owner of the property gifted. The fact that the property may be "owned by" two or more persons does not in my view mean that the property has not been owned by one of the trustees who is also the disponer. Multiple ownership does not mean that the property has not been owned by one of the owners during the relevant three year period.

If, for whatever reason, it were decided that there was a real risk that multiple ownership does not satisfy section 86(3A)(b) then solution 2A could be adopted.

Solution 2A

Solution 2A is to arrange that the disponer is the sole trustee of the trust. This solution would only be necessary if it were not considered sufficient for the disponer to be the owner by virtue of being one of two or more trustees who own the relevant property.

The disadvantage of this solution is that unless the disponer was the sole trustee from the date that the trust acquired the residence, which is often not the case, a further three years would have to expire before the residence could be appointed to the beneficiary.

If solution 2 or 2A are deemed to be unworkable or to involve too high a risk of Revenue attack then a variation of solution 2A could be adopted, solution 3. The only difference between solution 2A and solution 3 is that the trustees in solution 3 have a general power of appointment, whereas this might not be the case with solution 2A.

Solution 3

The objective of solution 3 is to arrange that the disponer is the sole trustee of the trust and that the disponer has a general power of appointment. This solution would only be required if it were considered that there is a risk that ownership by the disponer in his capacity as a trustee would not be sufficient for the purposes of Section 86(3A)(b) CATCA 2003.

Solution 3 would operate as follows:

1. Steps would be put in place to arrange that the disponer is the sole trustee.

2. The sole trustee must also be a beneficiary of the trust. If this were not the case and there were a power to add to the class of beneficiaries then the disponer would be added to the class of beneficiaries.

3. The property would be appointed to the beneficiary once the beneficiary has lived in the property as his or her only main residence for three years after the disponer has become the sole trustee.

As noted above section 86(3A)(b) CATCA 2003 requires that the property is “owned by the disponer” during the period of occupation of the beneficiary. The objective of solution 2 is to ensure that the property satisfies this condition of being owned by the disponer whilst still retaining exemptions from CGT and stamp duty.

Section 2 CATCA 2003 states as follows:

> absolute interest, in relation to property, includes the interest of a person who has a general power of appointment over the property.

Therefore, a trustee who has a general power of appointment over trust property has an absolute interest in that trust property for CAT purposes. In my view, the person who has an absolute interest in a residence would own that residence for the purposes of section 86(3A) CATCA 2003.

The term ‘general power of appointment’ is defined in section 2 CATCA 2003 as follows:

> General power of appointment includes every power, right, or authority whether exercisable only by will or otherwise which would enable the holder of such power, right, or authority to appoint or dispose of property to whoever the holder thinks fit or to obtain such power, right or authority, but exclusive of any power exercisable solely in a fiduciary capacity under a disposition not made by the holder, or exercisable by a tenant for life under the Settled land Act 1882, or as a mortgagee.

If solution 3 is adopted then although the disponer will not have the power, right or authority to appoint or dispose of the property to whoever the disponer thinks fit, the disponer will have the power to obtain such power, right, or authority. The reason for this is that the disponer can appoint the property to himself/herself absolutely and therefore obtain the power, right or authority to dispose of the property to whosoever the disponer thinks fit.

In order to ensure that the disponer has a general power of appointment any other trustees would need to resign. Otherwise, the disponer would need the consent of the other trustees in order to appoint the trust property to the disponer (see *Re Watts, Coffey v Watts* [1931] Ch 302).

The definition of general of power of appointment states that such power shall be "exclusive of any power exercisable solely in a fiduciary capacity under a disposition not made by the holder".

It is therefore necessary to ask the question if a sole trustee exercising the power to appoint the property to himself/herself is exercising that power in a "fiduciary capacity", and therefore does not have a general power of appointment. In *McCarter –v- MNR* [1959] CTC 313, 59 DTC 1173, a Canadian case, the sole executrix of an estate had a life interest with power to appoint capital to herself. However, the class of beneficiaries was a limited class. The judge held as follows:

> In determining whether or not a power is exercisable in a fiduciary capacity, I am of the opinion that, if the power is such that the holder can dispose of the property to himself to be used as his without any restrictions as to circumstances in which he may so exercise it, and without responsibility to any other person, the fiduciary feature contemplated by the exception is lacking, and I think that this is so whether or not the power is incidental to or derived from the holding of a position or office which under other circumstances would by itself imply fiduciary relationship.

This decision is not binding on the Irish courts but is a useful authority supporting this view. Also, the view above is supported in the case of *Re Parsons, Parsons v AG* [1943] CH 12. In conclusion, in my view, once the disponer has a general power of appointment there is a good argument that he is the owner of the trust property for the purposes of section 86(3A) CATCA 2003. However, if solution 3 is deemed necessary it will still be necessary for the residence to be held by the trustees for a further period of three years in order to satisfy section 86(3A)(b).

The stamp duty and CGT implications of arranging that the disponer has a general power of appointment for CAT purposes also need to be examined.

CGT

Section 604(10) TCA 1997 extends the CGT principal residence exemption to the trustee of a trust where the beneficiary has occupied that residence as his or her only main residence. The relevant wording of sub section 10 is as follows:

> This section shall also apply in relation to a gain accruing to a trustee on a disposal of settled property …. where during the period of ownership of the trustee the dwelling ….. has been the only main residence of an individual entitled to occupy it under the terms of the settlement….

The essential elements of sub section 10 are as follows:

1. The gain must accrue to "a trustee". If solution 3 is put in place then the gain on the appointment from the sole trustee (settlor) would still be a gain accruing to a trustee even though that trustee has a general power of appointment.

2. The gain must accrue on a disposal of "settled property". Settled property is defined in section 5 TCA 1997 as "any property held in trust other than properties to which section 567 applies". In my view the property is clearly held in trust. Also, section 567 TCA 1997 does not apply to the property as the beneficiaries do not have the exclusive right to direct how the trust property should be dealt with.

3. It is a further requirement that "during the period of ownership of the trustee" the dwelling house must have been occupied as the only or main residence of the individual entitled to occupy it under the terms of the settlement. It is clear from UK case law that a beneficiary allowed to occupy property under the terms of a discretionary trust is entitled to the exemption under section 604(10) (see *Sansom v Peay*).

On the basis of the above CGT exemption should be available under section 604(10).

Stamp Duty

It is also important that exemption from stamp duty is retained on the transfer of the property from the trustees to the beneficiary.

The transfer of the property from the sole trustee to the beneficiary would be a voluntary disposition for the purposes of section 30 SDCA 1999. No stamp duty will be paid provided the voluntary disposition comes within one of the exceptions set out in section 30(5) SDCA 1999. In my view the appointment by the trustee to the

beneficiary clearly comes within section 30(5)(d) SDCA 1999, as it is a conveyance or transfer “made to a beneficiary by a trustee”. The fact that the trustee has a general power of appointment should not impact on this position.

If any argument were advanced by Revenue that because of the general power of appointment the sole trustee was in fact the beneficial owner of the property then an exemption from stamp duty could still be obtained under section 30(5)(c) (a conveyance or transfer “under which no beneficial interest passes in the property conveyed or transferred”).

Solution 4

One of the more interesting potential solutions is to attempt to arrange that the benefit is taken as an inheritance by the intended beneficiary rather than a gift. Section 86(3)(A) CATCA 2003 applies only to gifts. Therefore, an inheritance from the trustees of a trust that satisfies the other conditions of section 86 CATCA 2003 would not be subject to the restrictions set out in section 86(3)(A) CATCA 2003.

The particular circumstances of each case will determine how this might be achieved. However, I can envisage a number of situations where this might be possible and practical. Again, discretionary trust tax would need to be taken into account.

Loan Losses

This section covers the basic rules relating to capital gains tax losses on loans and also some associated planning.

The main provision dealing with capital gains tax losses is section 546 TCA 1997. This section sets out the definition of allowable capital gains tax losses.

Section 546(1) TCA 1997 states that if the asset is not a chargeable asset then “no allowable loss shall accrue on its disposal.”

The treatment of debts for capital gains tax purposes is dealt with in section 541 TCA 1997.

Section 541(1) TCA 1997 states that the original creditor will not be liable to capital gains tax on the disposal of a debt. Therefore, under section 546(1) TCA 1997 (as outlined above), if a person makes a loss on the disposal of a debt they will not be

entitled to claim a loss for capital gains tax purposes. There is an exception to this rule for a "debt on security within the meaning of section 585". This means that a debt on a security is liable to capital gains tax and as a result, where applicable, you can also claim a capital gains tax loss on a debt on a security.

The exception applies to a debt on a security within the meaning of section 585. However, surprisingly section 585 does not contain a definition of a debt on security. section 585 does define a security as including:

> any loan stock or similar security, whether of any government or of any public or local authority or of any company and whether secured or unsecured but excluding securities within section 607.

As there is no specific definition of a debt on security, we must look at case law to determine if a debt is a simple debt or a debt on a security.

There is a significant body of UK case law on what constitutes a debt on a security. The main points from these cases are:

- A "debt on security is not a synonym for a secured debt" (*Cleveleys Investment Trust v IRC*)

- A debt on a security may be unsecured but it should have "if not a marketable character, at least such characteristics as enable it to be dealt in and if necessary converted into shares or other securities" (*Aberdeen Construction Group v IRC*)

- A debt on security should have "added characteristics such as may enable them to be realised or dealt with at a profit" (*WT Ramsay Ltd v IRC*).

Although the views of the UK courts can be helpful in determining the characteristics of a debt on a security, Irish law will follow the Irish courts to the extent that they have expressed views on this issue and not the UK cases.

The meaning of a debt on security has been considered in the Irish High Court case *JJ Mooney v Noel McSweeney* [1997] ITR.

The McSweeney case concerned a loan made to a company by a major shareholder. The loan was a subordinated loan not carrying interest. This loan was convertible into shares in the company at a predetermined price. Mr Justice Morris said:

> It is clear from the earlier judgements that eminent members of the English and Scottish bench found difficulty in defining and identifying the nature of “a debt on a security.” All have agreed that it does not mean simply “a debt which is secured” or put another way, it is not the opposite to an unsecured debt.

Mr Justice Morris also stated:

> The pure loan is exempt from CGT because it can never exceed the value. With the additional rights to convert into stock a debt on a security may appreciate in value and can be marketed at a profit. This is the clear distinction between the two types of debts … It is not relevant that a purchaser may have had difficulty because of local or transient commercial considerations in finding another purchaser. Once the transactions contained the characteristics which would in the ordinary course of commerce render it marketable, then it meets the criteria.

It is clear from the above that for a debt to be considered a “debt on security” it must have the following characteristics:

- Be capable of increasing in value
- Be marketable

For a debt to be considered a debt on security under Irish law it must meet the above conditions but it does not have to carry interest. This is a major difference between the Irish courts and the UK courts.

If there is no loan documentation in place it would be very difficult to argue that the debt is marketable and capable of increasing in value. Therefore, in this case the debt would be treated as a simple debt and any loss would not be allowable for capital gains tax.

Loan Loss Planning

There are a number of potential ways to ensure the creditor receives some measure of relief for a loss on a simple debt not evidenced in writing. I have mentioned two below.

Firstly, it should be possible to convert a simple debt into a debt on security by ensuring that the above two conditions are met. This should be done before the loan has decreased in value because of section 552(1) TCA 1997, which determines the consideration paid for the debt on security for a future sale. This section states that the cost of the debt on a security, for a future disposal, will be the value of the consideration given for this debt on a security. If the simple loan is converted into a debt on security at a time when the loan has a negligible value, then the consideration given for the debt on a security is the market value of the loan, which is negligible.

Another possible method of obtaining some measure of relief is to take advantage of section 541(3). This subsection deals with the situation where a creditor acquires property in satisfaction of a debt and subsequently disposes of that property. This subsection states that the gain arising on the subsequent disposal of that property shall be limited to the gain which would have arisen if the creditor had acquired the property for a price equal to the amount of the debt outstanding.

This provision could potentially be utilised to, for example, arrange that an asset other than cash is transferred to the creditor as a part payment for a loan in the expectation that that asset will appreciate in value and a subsequent gain on the disposal of that asset will be reduced under section 541(3).

Finally, if the debt is not a debt on a security and it is not possible for the company to transfer some property to the creditor, then an alternative is for the creditor to try and sell the debt. section 541(1), which states that a debt is not a chargeable asset, only applies to the disposal of the debt by the original creditor. If the original creditor were to sell the debt to a third party, the third party could then claim a capital gains tax loss on the ultimate disposal or realisation of the debt. It is important to be aware of the other capital gains tax provisions, such as the rules for connected parties, if undertaking this option to ensure that the client will end up with a loss allowable for capital gains tax.

Tax Rates

As a result of the tax increases introduced in the last two Finance Acts we are now in a much higher tax environment and it is more important than ever for clients to plan to minimise their tax liability. When you take into account income tax, PRSI, the health levy and the income levy, the maximum tax rate on income in 2010 will be 55%. This is an increase of 8.5% compared with 2008. The actual rate for 2009 is 53.16%.

Some of what follows may seem basic but it is very important. Clients need to appreciate fully the impact increased tax rates, the new income levy and the restriction on certain tax relief will have on them.

The top rate of 55% does not apply to all types of income so there are ways to potentially reduce tax liabilities for example, by ensuring that clients structure their investments correctly.

The maximum tax rate of 55% is made up as follows:

	2010	**2008**
Income tax	41%	41%
PRSI	3%	3%
Health levy	5%	2.5%
Income levy	6%	-
	55%	**46.5%**

*Actual rate for 2009 is 53.16% as the changes to the health and income levies were introduced part way through the tax year

Income Tax

The rates of income tax have remained unchanged at 20% (standard rate) and 41% (higher rate). The bands of income tax are as follows:

	20%	**41%**
Single person	First 36,400	Balance
Married one income	First 45,400	Balance
Married two incomes	First 72,800	Balance

Health and Income Levy

When combined the maximum rate of levies is 11% (health levy 5% and income levy 6%). The chart below sets out the rates that apply in 2010. You should note that the rates and bands apply to a husband and wife separately.

Levies 11%			
Level of income	**Health levy**	**Income levy**	**Total**
0-75,036	4%	2%	**6%**
75,037 – 174,980	5%	4%	**9%**
174,981 and above	5%	6%	**11%**

I have set out below some examples of how the changes in tax rates, the introduction of the income levy and restriction of certain reliefs has increased the tax burden on individuals.

Example 1

In the year 2009 Mike who is a dentist has trading income of EUR300,000. He also has tax deductible capital allowances available of EUR40,000. Therefore his taxable profits are EUR260,000. He was aged 51 in 2009 and will be making the maximum contribution to his pension.

Compared with 2008 he will suffer an income levy of up to 5% (composite rate for 2009) on his gross income of EUR300,000. In addition, the maximum pension contribution on which he can get tax relief in 2009 is EUR45,000 (EUR150,000 at 30%). If his income was the same in 2008 he could get tax relief on a pension payment of EUR78,000 (EUR260,000 at 30%). In 2008 the cap on net relevant earnings for pension contributions was EUR275,238.

I have calculated below Mike's tax liability in 2008 and 2009 on the basis that his income was the same for both years and that he made the maximum pension contribution in each year. There is an increase in tax of EUR27,975 in 2009 compared with 2008.

Example 1 – dentist

Tax payable in 2008

	EUR	EUR
Trading income		300,000
Less capital allowances		(40,000)
Pension payment (maximum)		(78,000)
Taxable income		182,000
Income tax		
35,400 at 20%	7,080	
146,600 at 41%	60,106	67,186
PRSI		
260,000 at 3%		7,800
Health levy		
100,100 at 2%	2,002	
159,900 at 2.5%	3,998	6,000
Total tax payable in 2008		**80,986***

*Ignores personal tax credits and reliefs.

Tax payable in 2009

	EUR	EUR
Trading income		300,000
Less capital allowances		(40,000)
Pension payment (maximum)		(45,000)
Taxable income		215,000
Income tax		
36,400 at 20%	7,280	
178,600 at 41%	73,226	80,506
PRSI		
260,000 at 3%		7,800
Health levy		

75,036 at 3.33%	2,499	
25,064 at 4%	1,002	
159,900 at 4.16%	6,652	10,153
Income levy		
75,036 at 1.67%	1,253	
25,064 at 3%	752	
74,880 at 3.33%	2,494	
75,140 at 4.67%	3,509	
49,880 at 5%	2,494	10,502
Total tax payable in 2009		**108,961**

Example 2 – Landlord

From 7 April 2009 a tax deduction against rental income is only available in respect of 75% of interest payable on a loan used to purchase, improve or repair the rental property.

	EUR
Income from residential properties	250,000
Less capital allowances – fixture and fittings	(15,000)
Loan interest	(200,000)
Net profit	**35,000**

In this example, all the loan interest was payable after 7 April so the tax deduction for interest is EUR150,000. Therefore, income tax applies on a taxable profit of EUR85,000 and not on the actual profit of EUR35,000.

In addition, the income levy will apply to the profit before deduction of capital allowances. In this example the income levy applies to EUR100,000. It is worth considering example 2 a little further from a cashflow perspective.

I have set out below the actual tax payable in 2008 and 2009 on the basis that the rental income received and loan interest payable will be the same in each year. The calculation ignores capital allowances and assumes that the top rate of taxes will apply to the income in each year.

As a result of the restriction in interest relief and the increased tax rate, the tax charge in 2009 is more than double the tax charge in 2008 and the tax charge will exceed the actual rental profit which could lead to cashflow difficulties. If the interest relief is further restricted in the future the cash flow position for landlords would worsen significantly.

	2008	**2009**
Rental income	250,000	250,000
Loan interest (EUR200k per annum) deduction	(200,000)	(150,000)
Taxable profit	**50,000**	**100,000**
Maximum tax rate	46.5%	53.16%
Tax payable	**23,250**	**53,160**

Example 3 – Income levy applying to exempt income

The income levy is charged on almost all sources of income, including certain sources of income which are exempt from income tax. Take for example an individual with the following income.

	EUR
Tax exempt patent income	100,000
Other taxable income	50,000
Tax/PRSI/health levy will be payable on	50,000
The income levy will be payable on	150,000

Are there any ways of reducing the effective rate of tax?

In view of the fact that personal tax rates are so high clients should be doing everything possible to reduce their effective rate of tax.

Married couples

Married couples should be ensuring that income is spread between them to ensure that rate bands are being maximised. This is relevant for both income tax and the health and income levies. This is illustrated by the following example:

Married couple – All income with husband

		Husband	Wife
Self employed income		300,000	-
Rental income		30,000	-
Taxable income		**330,000**	
Income tax		**EUR**	**EUR**
45,400 at 20%	=	9,080	
284,600 at 41%	=	116,686	125,766
PRSI			
330,000 at 3%	=		9,900
Levies			
EUR75,036 at 6%	=	4,502	
EUR99,944 at 9%	=	8,995	
EUR155,020 at 11%	=	17,052	30,549
Total tax and levies			**166,215***

*Ignores the availability of any tax credits or reliefs.

If the husband were to transfer the rental property to his wife the overall tax position would be as follows:

	Husband	Wife
Self employed income	300,000	-
Rental income	-	30,000
Taxable income	**300,000**	**30,000**

Income tax		**EUR**	**EUR**
EUR72,800 at 20%	=	14,560	
EUR257,200 at 41%	=	105,452	120,012
PRSI			
EUR330,000 at 3%	=		9,900
Levies			
Self - EUR75,036 at 6%	=	4,502	
Self - EUR99,944 at 9%	=	8,995	
Self -EUR125,020 at 11%	=	13,752	
Spouse - EUR30,000 at 6%	=	1,800	29,049
Total tax and levies			**158,961**
Tax saving			**7,254**

Overall there is an annual tax saving of EUR7,254. The transfer of property between spouses should not give rise to any tax charges. However you need to be careful that it does not adversely affect tax relief for interest on a loan to purchase the property.

Traders

Tax on individuals has increased significantly in the past 12 months. However, the rate of corporation tax on trading profits remains at 12.5% and is likely to do so for the foreseeable future. As a result traders should be considering whether it is more tax efficient to operate their business through a company.

If it is possible to accumulate trading income in a company avoiding any close company surcharge issues and then liquidate the company in the future, the overall tax rate on profits could be as low as 34.38%. This is a combination of the 12.5% tax rate on trading profits and the capital gains tax rate of 25% on liquidation.

This is illustrated in the example below.

Trading income - personally

	EUR
Income	200,000
Tax at 55%	110,000
Net	90,000

Trading income - company

	EUR
Income	200,000
Tax at $12^1/_2$%	25,000
Net	175,000

- Ignoring new start up company break
- No EUR150,000 pension cap

Run for 5 years and liquidate company

	EUR
Net income 175,000 x 5	875,000
CGT at 25%	218,750
Net	656,250
Compared to personal	450,000
Saving over 5 years	206,250

There may be other advantages to operating through a company. Remember that company contributions to a pension scheme are not subject to a cap. If the trader has made capital losses on investments these may be available to set against any gain on the liquidation of the trading company.

Investments

In the boom years the range and complexity of clients' investments increased significantly. Clients have and continue to invest in products such as I-shares, Exchange Traded Funds (ETFs), Spiders, Mutual Funds, CFDs, Exchange Traded Commodities (ETCs) and notes/certificates linked to commodity prices or indexes as well as investing in traditional equities. In addition many foreign property based investments are structured through foreign trusts, companies or partnerships.

However, given the losses that have been sustained in the past 12 to 18 months on many investments, clients have become more concerned with capital protection rather than capital growth. There has been a noticeable shift into what are considered to be "safer" investments such as cash, cash based fund products and secured government gilts and bonds.

What rate of tax is payable on investments?

The answer to this question depends on the source and type of the investment and whether the return on the investment is the form of income or a gain. I have set out on the chart below the maximum tax rates that will apply in 2010 to various sources of investment income and gains. As the difference in the tax rate on the return from an investment can vary by as much as 30%, it is vitally important that your client understands how an investment is taxed before making the investment.

If you draw your client's attention to the fact that a gain on the sale of an investment may actually be liable to tax at 55% rather than 25%, this tends to focus the client's mind.

Wealth type	2010 maximum tax rate
Irish deposit interest	33%
EU deposit interest	33%
Irish dividends	55%
Foreign dividends	55%
Rental income	55%
Interest on Irish and foreign government bonds	55%
Gains on Irish funds	28%
Gains on EU funds*	28%
Gains on non EU funds	55%

Gains on Irish government gilts	Exempt
Gains on shares/property	25%

The above rates take into account income tax, PRSI, health levy and the income levy and assumes self employed tax status.

*EU funds include funds located in the EU, the EEA and OECD countries with which Ireland has a Double Tax Treaty.

Cash investments

Interest earned on bank deposits held in Ireland is subject to DIRT at a rate of 25%. For self employed individuals it is also subject to PRSI of 3% and health levy of 5% (maximum). It is not liable to the income levy. Therefore, the maximum tax rate on Irish deposit interest is 33%.

Interest on bank deposits held in the EU is subject to the same rates of tax as Irish deposit interest i.e. maximum rate of 33%. However, interest on bank deposits outside the EU (such as the Channel Islands and the Isle of Man) is taxable at the top rate of tax and could be subject to a maximum tax rate of 55%.

If deposits are held in a foreign currency (i.e. any currency other than Euro) you need to bear in mind that any withdrawal from the account is a disposal of a chargeable asset for capital gains tax purposes and will crystallise either an exchange gain or loss.

Offshore funds

It is very common that a client's portfolio will include a number of investments which are funds. For commercial reasons (transaction and management costs are lower) clients are increasingly investing in Ishares and other exchange traded funds (ETFs) rather than directly into equities. It is often assumed that Ishares and ETFs are capital gains tax investments because they are traded on a stock exchange. However, in most cases such investments are in fact funds and should be disclosed accordingly.

There are a number of important points to note in respect of fund investments.

Irish Funds

Income and gains from Irish based funds are charged to income tax at a rate of 28%. The tax is deducted by the fund administrator so the investor will receive a net of tax payment from the fund which has no further liability to tax. Income distributions are also liable to the health levy (maximum 5%).

EU funds

Funds located in the EU, EEA and OECD countries with which Ireland has a double tax treaty are considered to be good locations for offshore funds. In general the rate of income tax that will apply to income distributions from EU funds will be 25% (regular distributions) or 28% (other distributions). Such distributions are liable to the health levy but are not liable to the income levy or PRSI. Therefore, the maximum tax rate on income distributions is 30%/33%.

Gains on the sale of units from EU funds are charged to income tax at a rate of 28%.

You should note that only EU funds which are regulated qualify for these rates of tax. The funds must be an investment authorised by the authorities of an EU/EEA/OECD country and an undertaking for collective investment similar to one of the following entities:

- Investment limited partnership
- Authorised investment companies
- Authorised unit trust scheme

Other offshore funds –"bad funds"

Offshore funds (regulated and unregulated) located in other jurisdictions are considered to be bad funds. This includes funds located in the usual tax havens such as the Cayman Islands, the Isle of Man and the Channel Islands. In general income distributions from bad funds and gains on the sale of bad funds will be liable to marginal rate income tax, PRSI and levies (i.e. maximum of 55%).

Personal Portfolio Investment Undertakings (PPIUs)

As the tax rates for Irish and EU based funds were and still are favourable compared with the maximum income tax rates, such funds became popular vehicles for investors.

Revenue were concerned that the offshore fund legislation was applying in situations not originally intended. Finance Act 2007 introduced a surcharge in respect of funds which fall into the definition of PPIU's.

As set out in TCA 1997 section 739 (BA), a PPIU is effectively where an individual invests in an offshore fund/investment undertaking and that individual or a person connected to them or acting on their behalf, can select or influence the selection of the assets invested in by the offshore fund. Revenue do not like this approach and as a result punitive tax rates on income and gains are imposed on PPIU's as follows:

- Tax rate on income distributions from PPIU's - 53% (includes maximum health levy of 5%)
- Tax rate on gains on sale of interest in PPIU - 48% (health levy does not apply)

The rates can be even more severe if certain reporting requirements are not fulfilled. The rules relating to PPIU's are not straightforward and it is important that you review the provisions of section 739 TCA 1997 in respect of clients fund investments.

What is an offshore fund?

One of the first issues for an adviser is identifying whether an investment is an offshore fund or not. The definition of an offshore fund is widely drafted and in theory can include any foreign company, unit trust or co-investment arrangement (section 743 TCA 1997). In the case of each investment it is necessary to look at the individual features of the investment itself to determine whether it is an offshore fund. Some general points to note are as follows:

1. If the term of the investment is greater than 7 years and it could not be reasonably expected that the investor will realise the value of the investment at any time within 7 years of purchase, then the investment is not a fund.

2. If the value of the investment is not a function of the assets owned by the company, unit trust or co-ownership but is determined by some other variable then the investment should not be a fund.

3. If the investment is in a company where the investor has the right to have the company wound up and would be entitled to more than 50% of the assets of the company on a winding up, then the investment is not an offshore fund.

Reporting requirements

There is a requirement to report the acquisition of an interest in an offshore fund on the tax return for the year of acquisition. If it is not correctly reported on a tax return there may be adverse tax consequences.

Firstly, a gain or an item of income may be incorrectly disclosed on the return and therefore an incorrect return has been made. Secondly, the error may not come to light until some years later (maybe as a result of a Revenue audit). At that stage it will be too late to claim the lower rate of tax applying to income and gains from EU based funds.

Losses

Losses arising on the sale of good funds cannot be set against capital gains or against gains arising on other offshore funds. Therefore, for tax purposes such losses are of no value. [See section 747(E)(3)(a) TCA 1997]. Losses arising on other offshore funds (bad funds) are available to set against capital gains.

Eight year charge

A tax charge is imposed in respect of EU offshore funds every eight years. The charge applies to funds which were purchased on or after 1 January 2001. Therefore, 2009 is the first year that this charge can arise. The first 8 year charge is based on the increase in market value of the fund from date of acquisition to the 8th anniversary of the purchase. The increase in value will be charged to income tax at a rate of 28%. A charge then arises every 8th year thereafter.

Bond and Gilt Investments

Interest on government and corporate bonds/gilts is subject to tax at the top rate (i.e. a maximum rate of 55%). Gains on Irish government bonds are exempt from tax but gains on foreign government bonds and all corporate bonds are liable to capital gains tax (currently 25%).

A word of caution with regard to Irish government bond investments. Where a bond is purchased with accrued interest the purchase price will be greater than the nominal amount of the bond. When the interest is received it will be taxed at the top rate of tax. If the bond is sold immediately after the interest payment the sale price is likely to be close to or equal to the nominal amount on the bond. Therefore, a loss on sale would arise and this loss would not be available to set against gains. This is illustrated by the example below:

Bonds – a note of caution

Bond – capital value	5m
Buy with accrued interest	100K
Buy in March 09 for	5.1m
Interest paid 31 May 2009	175K
Sell 1 June 2009 for	5m
Actual profit	75K

The outcome is that income tax is payable on the interest payment of EUR175,000 and a capital loss of EUR100,000 arises on sale which is not available to set against other capital gains.

Can a better tax rate than 55% be achieved in respect gilt/bond interest?

Clients should consider whether there are any regulated funds based in Ireland or the EU which invest solely in gilts and bonds. The return on this investment could be taxed at a rate as low as 28% and this could give a tax saving of 27%.

Investments – foreign tax issues

In recent years it has been usual for clients to invest in foreign based investments as well as Irish based investments.

When investing in foreign property or shares, clients need to take into account the rates of tax in the other jurisdiction and whether there is a Double Tax Treaty in force between Ireland and the other jurisdiction. Tax rates on individuals in Ireland are high at present but there are also high personal taxes in other jurisdictions.

I have highlighted two examples below where an individual can end up with a very high effective rate of tax when taking into account Irish and overseas tax.

UK rental income

Mr X has a rental profit from UK properties of EUR250,000. From 6 April 2010 the top rate of tax in the UK will be 50%. In Ireland Mr X will pay income tax at 41% and the income levy at rates up to 6% but will be able to claim double tax relief for UK tax which should cover any Irish income tax and income levy charge.

However, he will still be liable to 3% PRSI and 5% health levy against which no credit for UK tax is available. Therefore, his marginal rate of tax on the rental income could be as high as 58%.

Foreign dividends

Most foreign dividends will have foreign tax withheld. The amount of foreign tax deducted depends on the jurisdiction. In general credit can be claimed for the foreign tax withheld but the credit is restricted to a maximum of 15%. What happens if the foreign tax deducted is greater than 15%?

Mrs K receives a dividend from Nestle (Switzerland) of EUR10,000. Swiss tax is withheld at a rate of 35% i.e. EUR3,500. On the basis that Mrs K is paying the maximum tax rate in Ireland in 2010 her Irish tax liability will be 55%. The Irish tax charge on the dividend will be EUR5,500.

Under the Ireland/Swiss Double Tax Treaty the maximum tax credit available in this case is 15% i.e. EUR1,500. The amount of Irish tax payable is EUR4,000 and therefore, the actual net cash position after tax is as follows:

	EUR
Net dividend received	6,500
Irish tax payable	(4,000)
Net amount after Irish tax	2,500

This results in an effective rate of 75%!

Mrs K is entitled to reclaim EUR2,000 (i.e. 35% withheld less the 15% credit given in Ireland) from the Swiss tax authorities. For Switzerland any refund claim should be made on form 60 which is available from the website www.estv.admin.ch . A copy of the form is attached to this paper. In many jurisdictions it may not be straightforward to reclaim the tax.

Dealing with Revenue

I have set out below some issues that have arisen with Revenue for some clients in the last 12 months.

Capital Losses and Negligible Value Claims

Over the past 12 to 18 months some clients have seen the value of certain investments drop significantly. In some instances the value of the investment has been written down to nil.

In such cases it is possible to trigger a capital loss by making a negligible value claim under section 538 TCA 1997. If the claim is accepted by Revenue, the effect is that the asset is deemed to have been sold and immediately reacquired at the negligible value and thereby triggering the capital loss.

Under section 538 TCA 1997 the owner of the asset must satisfy the Inspector that the value of the asset has become negligible. Negligible is not defined in the Taxes Act and Revenue have set out their view on its meaning in Tax Briefing 53. Revenue state that it takes its normal meaning i.e. not worth considering/insignificant. They go on to state that a dramatic fall in the value of shares would not give rise to a

negligible value claim where the company continues to operate and its shares continue to be traded. Revenue give the example of shares purchased for EUR10m which would not be regarded as having a negligible value by virtue of their value decreasing to EUR100,000.

We have recent experience of claiming on behalf of clients, capital losses under section 538 TCA 1997 for loan note investments. This was on the basis that the investments were debts on security. On reviewing the claims Revenue's focus has been on the value of the investments and whether there is sufficient documentation to support the claims. Revenue made it clear that no repayment of tax based on the losses will be made until they are satisfied that the value of the investment is negligible.

The documentation supplied to Revenue included the following:

1. Copies of the loan note documentation.

2. Copies of latest sets of accounts of the company which issued the loan note.

3. Explanation from the company as to why the loans have not been repaid and are unlikely to be repaid in the foreseeable future.

4. Explanation as to why the clients have not taken legal action against the companies for repayment of the loans.

5. Valuations of the investments and the companies into which the loans were made.

A final point with regard to negligible value claims. Revenue have indicated that they will accept negligible value claims in respect of Anglo Irish Bank shares which were held at the date the bank was nationalised in early 2009.

Assurance/Verification Checks

Revenue's annual report for 2008 includes some interesting statistics under the heading "collection and compliance". The report states that Revenue employ a range of "interventions" including assurance checks, random audits and risk based audits.

In 2008, 13,414 audits were completed with an overall yield of EUR569.2m. This yield was down 17.2% in 2007 which reflects a reduction in the number of special investigations (i.e. offshore assets, bogus non resident accounts). Over 345,000 assurance checks were carried out in 2008, an increase of over 100,000 on the 2007 figure. The yield from assurance checks in 2008 was EUR63m.

It is certainly our experience that more clients are receiving assurance check notices following the submission of their returns, particularly where a refund of tax is being claimed. It is likely that the level of assurance checks will continue to rise as Revenue have stated in the report that assurance checks are a "less resource intensive form of intervention".

Therefore, it is very important that you have supporting documentation on your file for the figures disclosed on tax returns so that this information can be supplied without any delay to Revenue. Typically Revenue are asking for the following information:

- P60s
- Pension payment certificates
- BES certificates
- Receipts for medical expenses
- Receipts for charitable donations.

Repayment Claims and Interests

You should note that under section 865A TCA 1997 a client may be entitled to interest on a repayment of the tax. Where a valid claim is made interest is payable at a rate of 0.011% per day (approximately 4% per year) beginning 93 days after the day on which the claim to repayment becomes a valid claim.

It appears that Revenue take the view that if as a result of an assurance check there is a change to the figures on the tax return, this means that a valid claim has not been made until such time as the return is amended. As a result repayment claims may not be receiving interest even though the original claim was made in excess of 93 days prior to the issue of the refund.

You may be interested to know that in 2008 the Revenue paid out over EUR830,000 in interest to individuals and companies. In the same period interest collected by Revenue on late paid tax was EUR79m.

Cash Flow Difficulties

Increasingly there are cases where clients are having difficulty funding tax liabilities. Our experience with Revenue is that they are willing to come to a stage payment arrangement with clients. We have experience of agreeing weekly payment settlements. However, interest (currently at an annual rate of just below 10%) is always factored into these settlements. Failure to keep up payments agreed with Revenue can result in them looking for immediate settlement of the outstanding amount.

A vital issue to be aware of is the “Final Demand” notices issued by Revenue in cases of overdue tax. These notices state that three courses of action are open to Revenue:

1. Court proceedings.

2. Refer the matter to the Sherriff or County Registrar.

3. Authorise a notice of attachment to a third party, often a bank.

We have become aware of Revenue’s increasing willingness to use the third option. Attachment orders have been applied to individual’s bank accounts so that the payment of tax has been taken directly from the individual’s cash with the bank.

The best advice for clients is to engage with Revenue as soon as it becomes clear that a problem is going to arise with regard to a payment of tax. Indeed Revenue have been actively encouraging struggling taxpayers to come to them and discuss “mutually acceptable” proposals as opposed to postponing or ignoring the issues.

Action required now?

Preliminary tax

Preliminary tax for 2009 is payable on 31 October 2009/16 November 2009 (if paying and filing through ROS). The preliminary tax payment for 2009 can be based on either of the following:

- 100% of the income tax liability for 2008, or
- 90% of income tax liability for 2009.

For cash flow reasons we are seeing a lot of clients basing their preliminary tax for 2009 on 90% of the 2009 liability. While it may initially seem that choosing this option provides a cash flow saving, there are number of points that should be considered.

1. The payment will be based on an estimate of the liability for 2009. As the year is not yet over, you need to ensure you take into account income that will arise in November and December 2009.
2. The restriction on tax relief for loan interest on rented residential properties applies in 2009 so this must be factored into any 2009 calculation.
3. Remember to include the income levy in your calculations.
4. The rate of health levy contribution doubled in 2009.
5. If your clients have invested in offshore funds which they have had since 2001, an eight year charge may arise in 2009 which is liable to income tax.
6. Make sure that gains on offshore funds are identified and included in the income tax calculations.
7. If preliminary tax is underpaid Revenue will charge interest.

Non Principal Private Residential Property Tax

The non principal private residence (NPPR) property tax was introduced in 2009. This is an annual tax of EUR200 per residence. The due date for payment was 30 September but there is a period of grace which means no penalties will arise if payment is made on or before 31 October 2009. A penalty of EUR20 per month will apply to any late payment of the property tax.

There are a number of points that you should note:

1. The tax applies “per residence” therefore if there are six apartments in one house there is a liability of EUR1,200. If the tax is not paid it remains as a charge on the property and can cause difficulties if you want to sell the property. The charge relates to Irish property only.

2. It does not just apply to investment properties - second homes and holiday homes are also caught by this charge.

Commission on Taxation

As you will all be aware, the Commission on Taxation produced its detailed report on 7 September 2009. The report was extremely lengthy and detailed, and contained more than 240 separate recommendations. The Minister for Finance has already indicated that many of the more radical recommendations such as introduction of an annual property tax will not be introduced in the short term. However, it is likely that some of the recommendations will be introduced.

When attempting to foresee what changes the Minister for Finance will enact in his upcoming budgets, it is important to remember his often stated aim that “it is the intention of the Government to continue to remove unnecessary reliefs and shelters from the tax system in successive budgets”. With this in mind, we believe the following items could well be introduced in the December budget.

1. Restriction of a tax free lump sum on termination of employment.

2. Restriction of tax free lump sums from pension funds.

3. Restriction of CAT business relief and agricultural relief as well as capital gains tax retirement relief.

4. Abolition of capital gains tax and stamp duty relief on transfers of sites from parent to child.

5. Abolition of various capital allowance schemes, for example, in relation to crèches.

6. Abolition of exemption from tax for patent income.

7. Restriction of tax relief to standard rate (20%) for donations to charity.

Advising high net worth individuals and owners of family businesses

Fergus McCarthy
&
Patrick Kinnane
Kennelly & Twomey Limited

Overview

- Transfers to the next generation in 2009
- Family company case study
- Use of trusts in estate and tax planning
- Foreign domiciled individuals
- Loan losses

Overview (cont)

- Tax rates and levies
- Tax on investments in 2009
- Losses
- Dealing with Revenue in 2009

Transfers to the next generation

2009

The year of the asset transfer?

Asset transfers

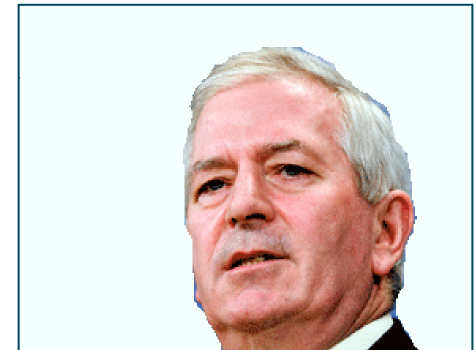
Why transfer in 2009?

- Low asset value?
- Capital tax rates on the increase?
- Tax reliefs exist today that have an uncertain future?

Potential for significant tax savings

Capital tax rates on the increase?

Year	CGT	CAT
1996	40%	40%
1997	20%	40%
1999	20%	20%
2008	22%	22%
2009	25%	25%
2010	??	??

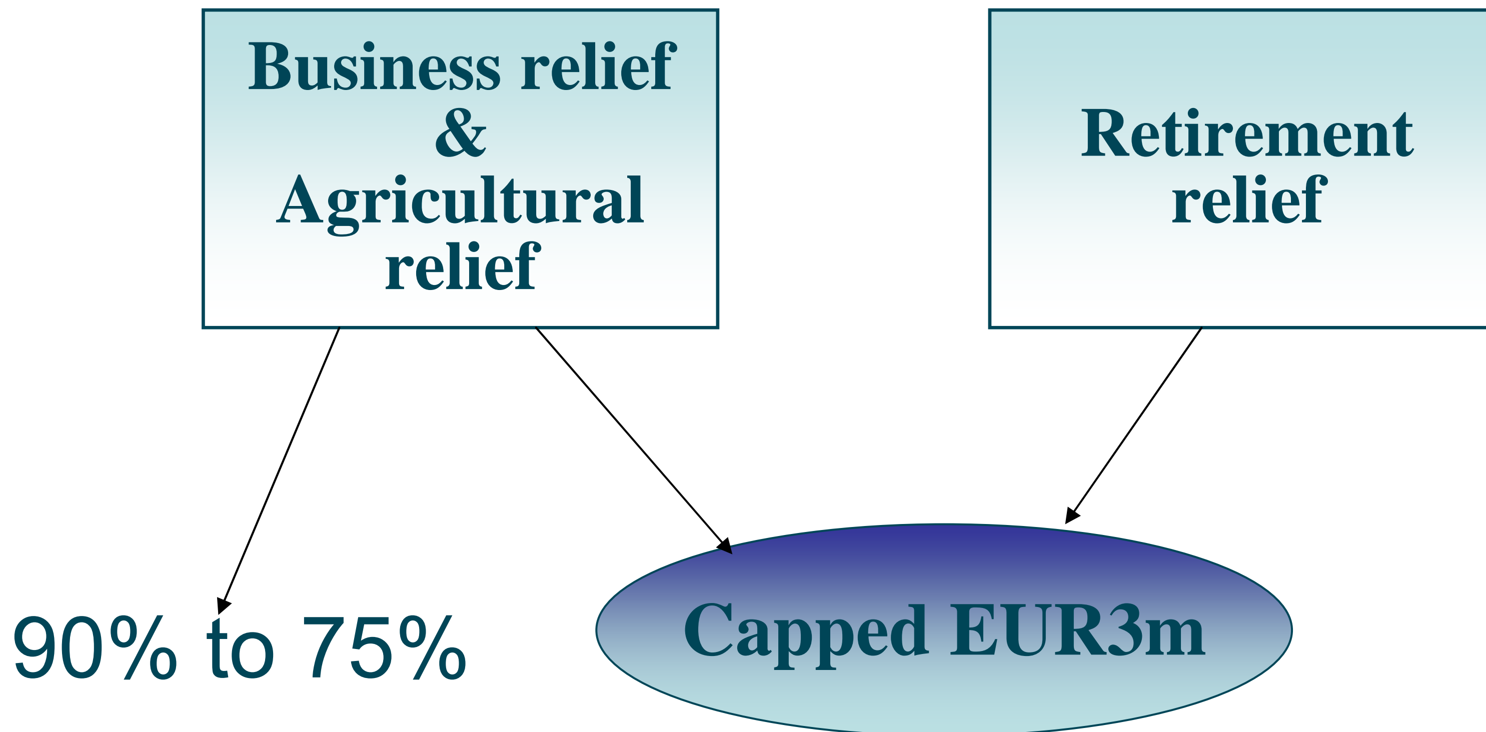


Tax reliefs – uncertain future

"It is the intention of the Government to continue to remove unnecessary reliefs and shelters from the tax system in successive budgets"

7 April 2009

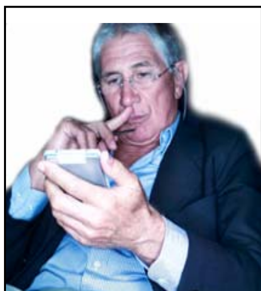
Reliefs - Commission on Taxation



Year	Agricultural relief		Business relief	
	Rate	Cap EUR	Rate	Cap
1994	70%	150,000	25%/30%	None
1995	50%	90,000	50%	None
1996	75%	None	75%	None
1997	90%	None	90%	None
2010	?	?	?	?

Case study

Fred



Simon

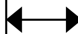
Business

Pierre

Non resident

Mary

Sean



Lucy

3 grandchildren

Assets		Value EUR
100% Fred Trading Ltd		10m
-Trade assets	9m	
-Cash	1m	
IRL quoted shares		4m
Cash/bonds		5m
PPR		1m
IRL invest property		10m
		30m

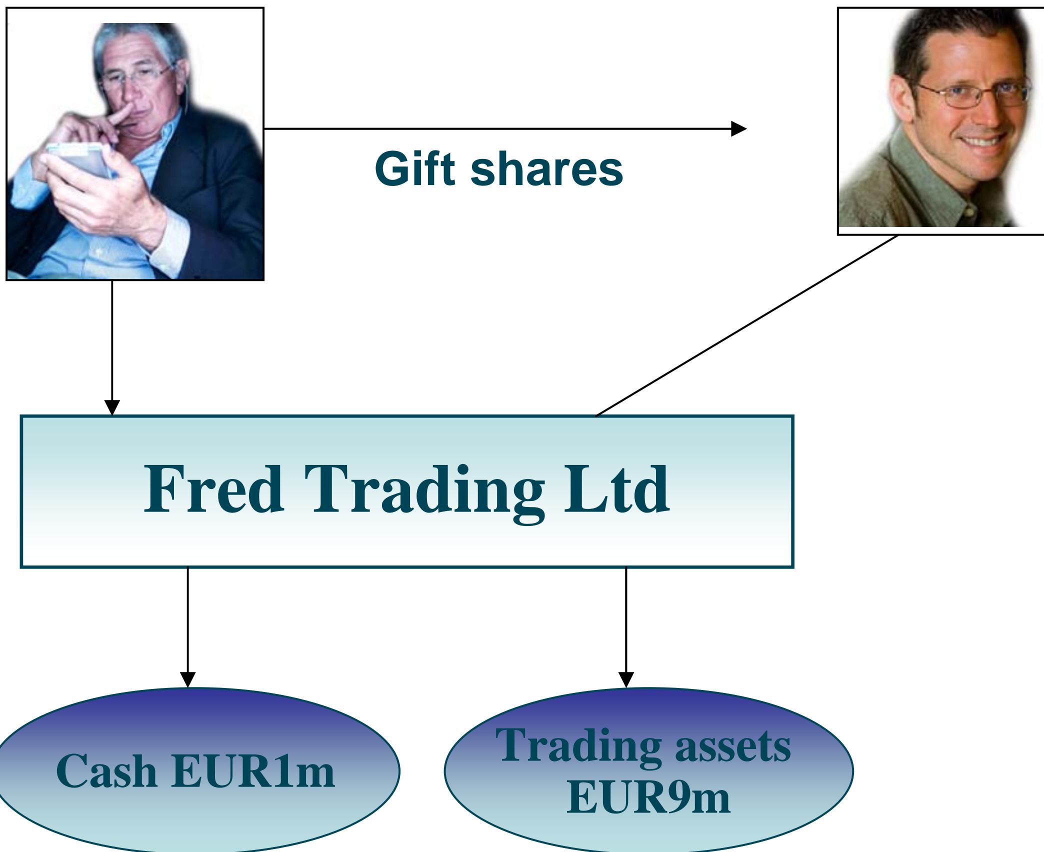
Commission on Taxation

	Current position	Commission recommendations
	EUR	**EUR**
Fred Trading Limited	10m	10m
Relief	(9m)	(3m)
CAT @ 25%	0.25m	1.75m
CGT @ 25% **(Note)**	0	(1.75m)
CAT	0.25m	0
Total tax	**0.25m**	**1.75m**

Note: assumes no base cost and full business and retirement relief

Gift to Simon

Fred retains	EUR
10% votes	200k
6.9% equity	550k
	750k



Gift to Simon

- No CGT – retirement relief
- CAT of EUR231,000
- Stamp duty 1%

Buyback from Fred

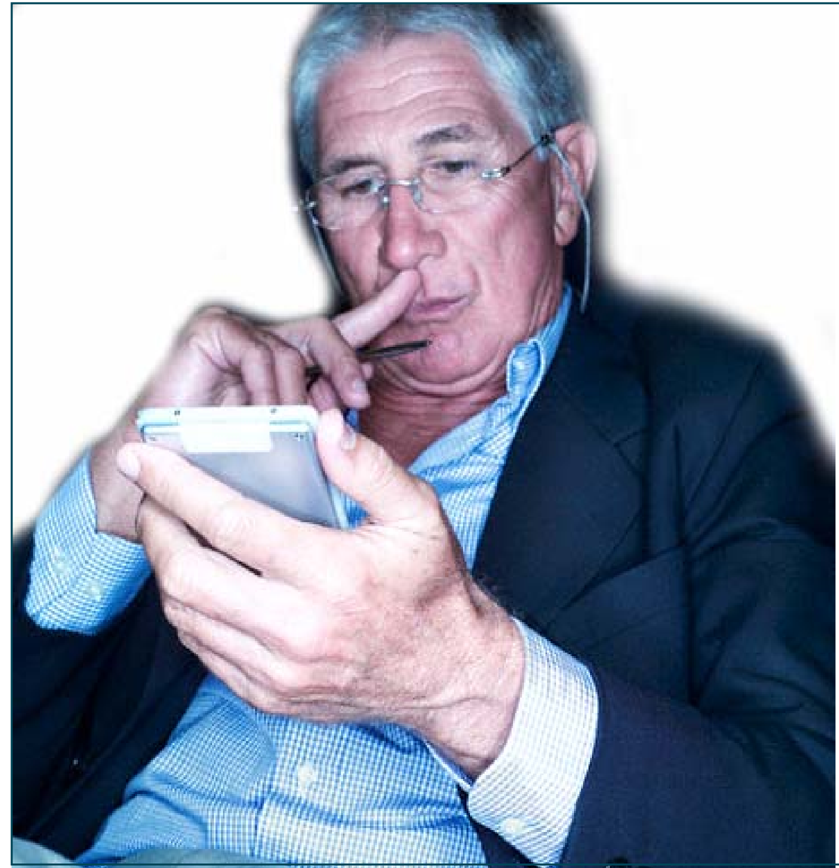
- No income tax – section 176 TCA 1997
- No CGT - retirement relief
- No stamp duty
- Beware section 817 TCA 1997!

Use of trusts in tax planning

- Generation skipping trust
- Warehouse trust
- PPR trusts

Fred – generation skipping

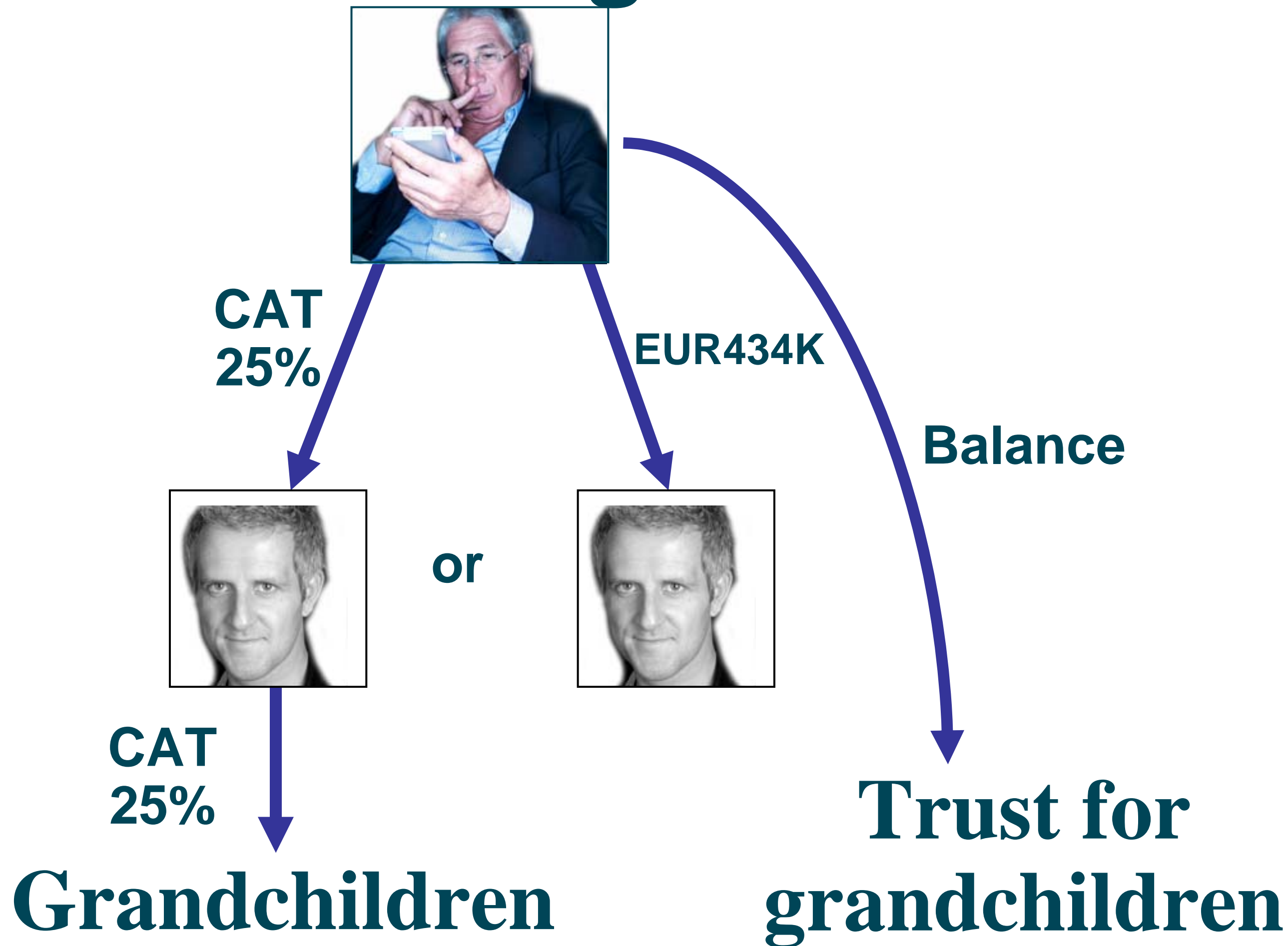
- 70's
- Sean (40)
- 3 grandchildren



Fred dies

- Sean gets EUR434K tax free
- Balance taxed at 25%
- Cost of EUR2.4m – on assets worth EUR10m
- Is there a better way?

Does client have grandchildren?



Grandchild inherits age 30

Age of grandchild when grandfather died	EUR1m in trust for	Saving if 5% growth EUR	Saving if 7% growth EUR
12	18 yrs	102K	143K
15	15 yrs	139K	184K
20	10 yrs	177K	214K
25	5 yrs	195K	215K

Generation skipping trust

- Estate EUR20m
- EUR10m to son
- EUR10m to grandchildren at age 30
- Saving EUR1m → EUR2.15m

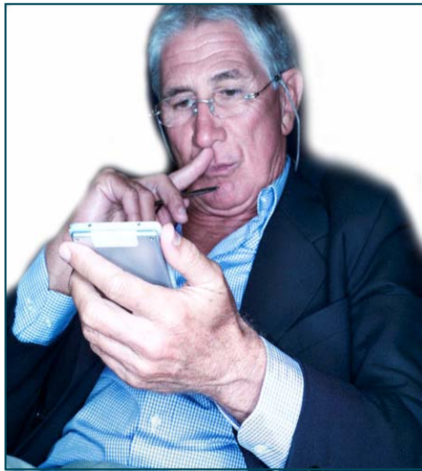
Postponing CAT charge

Warehouse trusts

Warehouse trusts – current uses

- Avoid CAT – non residents
- Avail of reliefs (e.g. agricultural, PPR)
- DTT? – may be possible to manage

Warehouse trust for non residents



Dies non resident

IR property

Sell IR property

Cash

Warehouse trust - reliefs

Sell property

Invest. property

House & cash

Trusts and income tax

Standard rate	20%
Surcharge	20%
	40%

Opportunities?

PPR trusts

- CAT house exemption – s.86 CATCA 2003
- Trusts used to manage CGT/stamp duty
- Finance Act 2007 – "owned by the disponer"
- House trapped?

PPR trusts – potential solutions

- Appoint to disponer
- "Owned by the disponer"
  - Trustees?
  - GPA?
- Alternative - Finance Act 2007 covers gifts only!!

IRL – non domiciliaries

NO TAX – non IRL gains
- Remittance planning possible

Compare "Offshore"
- No treaty network
- Transport links?

NO TAX – non IRL income
- Remittance planning possible
- Employment

NO CAT?
- Break residence every 5 yrs
- IRL Prop - hold through foreign company

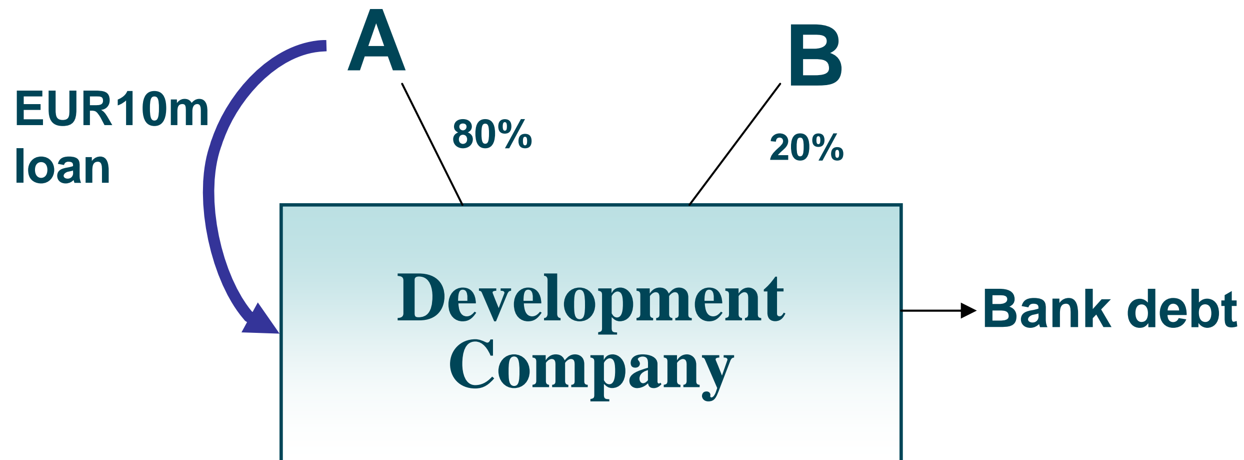
Compare UK
- GBP30k charge
- Planning more difficult

KENNELLY & TWOMEY LIMITED

Losses

- Loans
- Funds
- Negligible value claims

Debts & losses – basic CGT rules



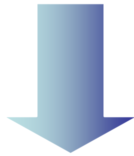
- Market value loan now EUR1m but no loan document
- S.541(1) – No chargeable gain on sale by original creditor (A)
- S.546(1) – No allowable loss
- Exception – “debt on a security” (“DOS”)

Loan losses – "debt on a security"

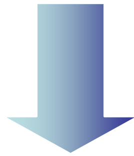
- S.541(1) – "debt on a security within the meaning of section 585"
- Section 585 – no definition!!
- *Mooney v McSweeney* [1997] ITR
  - Marketable
  - Potentially more valuable

Loan losses - planning

DOS? - yes



No



Sale to third party

or

S.541(3)

Overview

- Tax rates and levies
- Tax on investments
- Dealing with Revenue

Top rate of tax

- For 2008 top rate was 46.5%
- The top rate will be 55% in 2010

How is 55% made up

	2010	2008
Income tax	41%	41%
PRSI	3%	3%
Health levy	5%	2.5%
Income levy	6%	-
	55%	46.5%

***Actual rate for 2009 is 53.16%**

Example 1 - Dentist

	EUR
Income 2009	300,000
Capital allowances	(40,000)
Taxable income	260,000

* Income levy (up to 6%) on EUR300,000
* EUR150,000 cap on pension contributions

Example 1 – Dentist continued

On the basis that the dentist makes maximum pension payment and is aged 50 in 2008

	2008	2009
	EUR	EUR
Tax payable	80,986	108,961

An increase of EUR27,975

Example 2 - Landlord

	EUR
Income from residential properties	250,000
Capital allowances – fixtures & fittings	(15,000)
Loan interest	(200,000)
Net profit	35,000

- Loan interest restricted to 75% from April 2009
- Income tax on EUR85,000
- Income levy on EUR100,000

Example 2 – continued
Interest relief - example

	2008	2009
Rental income	250	250
Loan interest (200k p.a.) relief	200	150
Taxable rent	50	100
Interest relief	100%	75%
Tax payable	23,500	53,160

Example 3
Income levy 6% - on exempt income

Exempt patent income	100,000
Other income	50,000
Tax/PRSI/health levy on	50,000
Income levy on	150,000

Married couples

- Balance income between spouses

Levies 11%

Level of income	Health levy	Income levy	Total
0 – 75,036	4%	2%	**6%**
75,037 – 174,980	5%	4%	**9%**
174,981 and above	5%	6%	**11%**

Married couples

	Husband	Wife
Self employed income	300,000	Nil
Rental income	60,000	Nil

Transfer property into joint names?

Married couples

The tax saving is:

Income tax saved	5,754
Levies saved	1,500
Annual tax saving	**7,254**

Trading income

Sole trader vs. incorporation

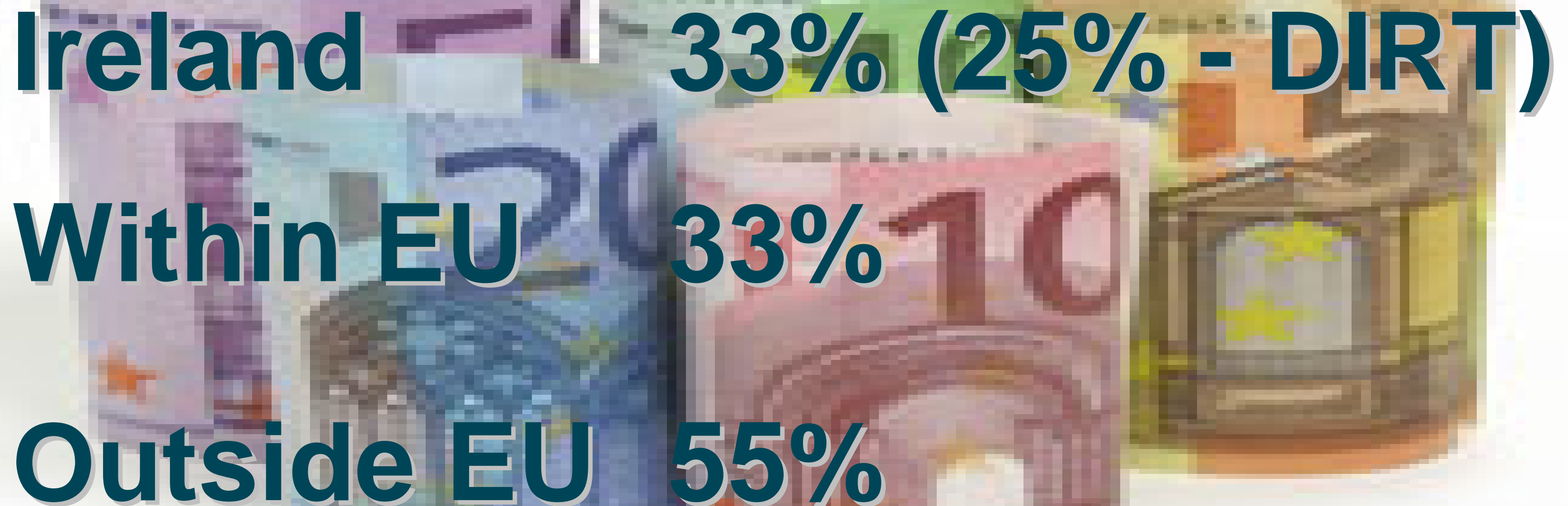
55% vs. 34.38%

Investments

Investments

- Cash
- Funds
- Bonds
- Tax rates

Cash on deposit



Ireland 33% (25% - DIRT)

Within EU 33%

Outside EU 55%

Cash deposits

- Foreign currency deposits
- Watch exchange rate gain/loss

Fund gains

28% (deducted by fund)

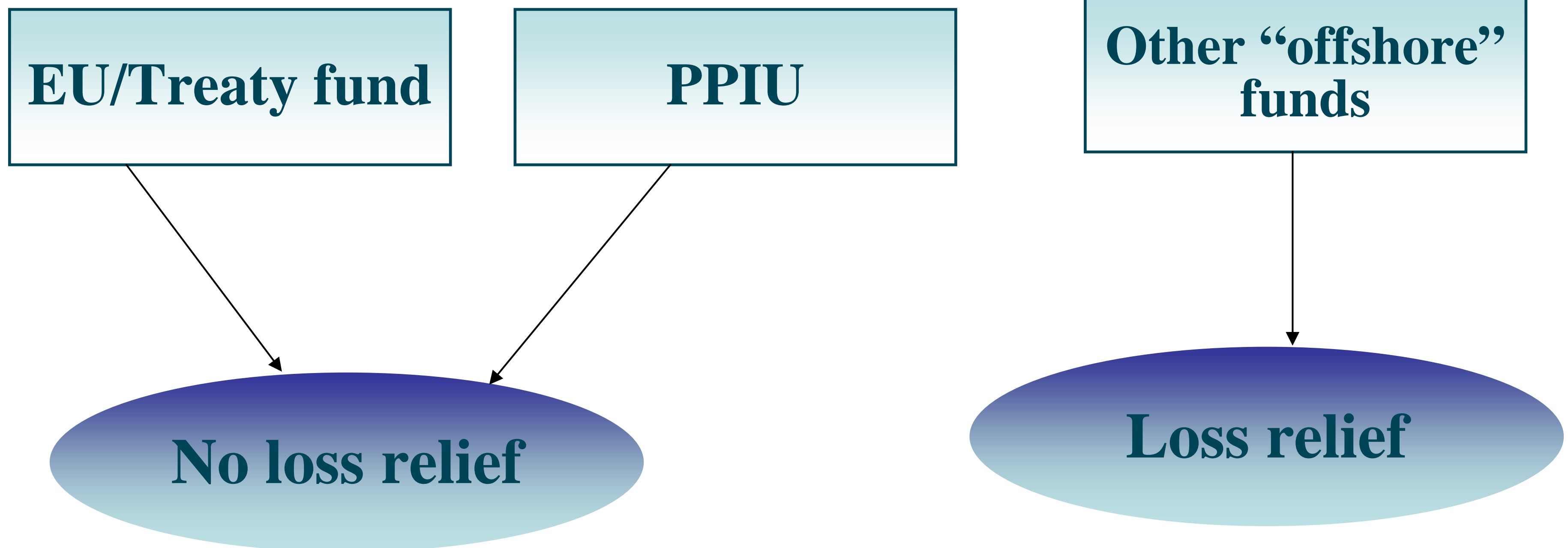
28% - “Good” location

55% - “Bad” location

Offshore funds

- Wide definition
- Location and regulation
- Reporting requirement
- Losses

Losses funds



Bonds

	Interest	Gains
Corporate bonds	55%	25%
Government bonds	55%	25%
Irish Government bonds	55%	Exempt*

Bonds a note of caution

Bond – capital value	5m
Buy with accrued interest	100k
Buy in March 09 for	5.1m
Interest paid 31 May 2009	175k
Sell 1 June 2009 for	5m
Actual profit	**75k**

Funds instead of direct investment

Irish and EU funds taxable at 28%

Instead of:

- Bonds held directly, use an Irish or EU fund
- Tax saving could be 27%

Investments

Personally	vs.	Corporate
55%		25%

Corporates

- Investment income generally 25%
- Capital gains 25%
- Irish/EU funds/US etc 28%
- Watch close company surcharge
- Capital losses

Investments
Foreign tax

- Watch foreign tax rates
- Is double tax relief available?

Other countries have high rates too!

- UK rental income
- UK top rate 50% from April 2010
- Health levy (5%) + PRSI (3%)

UK rental income

- Pay 50% tax in UK
- Then pay 3% PRSI
- Health levy 5%
- Top rate 58%

Foreign dividend income

	EUR
Dividend from Nestle	10,000
Swiss tax withheld (35%)	3,500
Irish tax liability (55%)	5,500
Maximum credit for Swiss tax (15%)	1,500

Foreign dividend income (cont)

	EUR
Net dividend received	6,500
Irish tax	(4,000)
Net amount after Irish tax	2,500
Effective tax rate	75%

Foreign dividend/withholding tax

- Reclaim from foreign jurisdiction
- e.g. Switzerland – form 60
  Website – www.estv.admin.ch

55% Interest outside EU

6% patents

55% offshore fund gains

33% EU deposit interest

55% self employed

25% capital gains

28% EU funds

9% artists/ woodland

52% employees

Dealing with Revenue

- Issues for private clients
- Recent experience

Losses – negligible value claims

- Section 538 TCA 1997
- "Negligible" – what does it mean?
- No actual disposal
- Documentation to support claim

Dealing with Revenue (cont)

- Refund claims
- Assurance/verification checks
- Tax payment difficulties

Action required now?

- EUR200 property tax
- Commission on Taxation
- Preliminary tax

Preliminary tax 2009

- Cash flow saving
- 90% of 2009 liability

Preliminary tax 2009 caution

- Estimate
- Restriction on interest relief
- Fund income and 8 year charge

Future tax landscape