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# The Family Home Gift/Inheritance Tax Exemption – All You Need to Know

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# Gift and Inheritance tax....

- ▶ 33%
- ▶ EUR225k parent/child threshold



# Other exemptions (section 82)

- ▶ Occupation of family home by child
- ▶ Free housing for child attending university (up to 25 only)
- ▶ Cost of family functions paid for by parent

# The Family Home Exemption



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# The Family Home Exemption

- ▶ Home in Ireland or abroad
- ▶ Includes land up to one acre (excluding the site)
- ▶ Only or main residence of recipient
- ▶ 100% Tax savings

# The Family Home Exemption – the donor

- ▶ In the case of a **gift**, the property must have been owned by the donor during the 3 years immediately preceding the gift
- ▶ During the 3 year period the donor cannot live in the property
- ▶ **Exception:** dependence by reason of old age or infirmity

# The Family Home Exemption – the donee

- ▶ 3 year occupation before the gift/inheritance
- ▶ **stumbling block! - no beneficial entitlement/interest to any other dwelling**
- ▶ 6 year occupation after the gift/inheritance
  - *Unless 55 at date of gift/inheritance*

# What is occupation for donee

- ▶ Work in an employment or office all the duties of which are performed outside Ireland
- ▶ The employer requires the donee to reside elsewhere
- ▶ The donee needs long-term medical care in a hospital, nursing home or convalescent home



# Replacing the dwelling house

- ▶ Before the gift/inheritance
- ▶ After the gift/inheritance

“Replaced”?

- *Sale proceeds reinvested in another property*

# Replacing the home

- ▶ Before the gift/inheritance
- ▶ The house and the new house are occupied as only or main residence for 3 from 4 years immediately preceding the gift/inheritance
- ▶ Partial claw back

# Replacing the home

- ▶ After the gift/inheritance
- ▶ Within 6 years of the gift/inheritance?
- ▶ Combined periods of occupation of both properties must total 6 years falling within the period of 7 years commencing on the date of the gift in order to avoid a claw back
- ▶ Partial claw back

# Summary – Family Home Exemption

- ▶ Main residence for 3 years prior to inheritance
- ▶ Continue to occupy for 6 years
- ▶ No interest in any other dwelling at date of inheritance



# Other issues

- ▶ Free use of assets
- ▶ Section 40(2) CATCA– “best price obtainable in the open market”

# Other issues

- ▶ CGT
- ▶ Stamp duty



# How can you help your clients?



# Using the exemption

- ▶ Plan now – lifetime gifts
- ▶ Will planning
- ▶ After the event – is it too late?



# Gift now

- ▶ Planning for the exemption by way of gift
- ▶ Understanding the client's circumstances
  - Available cash?
  - Do the children have negative equity issues?
  - Does the client have rental properties?
  - Does anyone want to retain/inherit the family home?
  - Is the client leaving the family home to anyone specifically?

# 1. Lifetime gift



# Lifetime gift example

- ▶ Mum and Dad want to downsize since retiring
- ▶ Mum and Dad want to give EUR250k to each son
- ▶ Fred has no house and lives in the family home
- ▶ Conor is married and has a house but it is deep in negative equity

# Fred acquires family home tax free

- ▶ Mum and Dad move out of family home
- ▶ Fred lives in the original family home for 3 years
- ▶ Mum and Dad then gift the home to Fred
- ▶ Tax issues:
  - Family home worth EUR450k at date of gift (2016)
  - Purchased for EUR80k in 1980
  - Stamp Duty 1% - EUR4,500 payable by Fred
  - Capital gain:  $\frac{2}{36} \times \text{EUR}370\text{k} = \text{EUR}20\text{k}$  (ignoring indexation)
  - Free use of property
  - No gift tax on transfer and threshold preserved

# Conor – help with negative equity

- ▶ Mum and Dad purchase a share in Conor's home to the value of EUR250k
- ▶ Conor receives a cheque for EUR250k cash from his parents
- ▶ Conor can use the funds to pay off some of the mortgage to alleviate the negative equity
- ▶ After 3 years Mum and Dad gift the share of the house back to Conor

# Conor: tax issues

- ▶ No gift tax on transfer and threshold preserved
- ▶ Stamp Duty 1% – 2 charges
  - At date of purchase by parents
  - At date of reacquisition by Conor
- ▶ CGT on any uplift in value after the 3 years
- ▶ Other considerations
  - Free use of property
  - Is the house in joint names?
  - Charge over property – alternative structure

## 2. Will planning



# Reasons for not qualifying

- ▶ The children already own properties
- ▶ Other residential property is left under the terms of the Will that knocks them out of the exemption
- ▶ 3 years pre occupation period
- ▶ The parents have left liquid assets in their estate



# Will planning

**Beforehand  
the individual  
cannot qualify  
for the family  
home  
exemption**



**Funds/assets  
put into a  
Trust**

**House comes  
out when the  
family home  
exemption  
conditions are  
satisfied**

# Will Trust

- ▶ Is it complicated?
- ▶ Part of the Will
- ▶ Executors hold on to assets longer
- ▶ What type of trust is appropriate?
- ▶ Costs

# Will Trust example

- ▶ Widowed Dad wants son Jim to inherit family home
- ▶ Fixed trust
- ▶ Will carefully drafted
  - Specify the date of appointment
  - Specify what happens to the income of the trust



# 3. After the Event.....

- ▶ Is it too late?



# After the Event

- Overlooking the exemption
- Is there a Will trust already in place?
- Disclaimers
- Disclaimers for consideration

# Disclaimers

- ▶ CAT – section 12 CATCA 2003
- ▶ *“Any liability to tax in respect of such benefit shall cease as if such benefit had not existed”*

# Family inherits family home



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# Family inherits family home

- ▶ Family of 4 inherit family home and other assets
- ▶ Estate value EUR5m
- ▶ Will states that estate to be split in 4 equal shares
- ▶ 3 of the 4 children live in the family home
- ▶ Other Irish and foreign properties



# Family inherits family home - the issues

- ▶ Didn't qualify for family home exemption
- ▶ There was a beneficial entitlement to other residential properties under the terms of the Will
- ▶ Large inheritance tax bill

# Family inherits family home

## Before planning

- ▶ Estate value – EUR5m
- ▶ Less 4 x thresholds – EUR900k
- ▶ Taxable value – EUR4.1m
- ▶ IHT @ 33% - EUR1.35m approx.
- ▶ Family home value - EUR3m

# Family inherits family home

- ▶ Estate disclaimed by all 4 children
- ▶ Estate now passes under rules of intestacy
- ▶ The estate come back to the 4 children again
- ▶ Further set of disclaimers required
- ▶ 3 children “disclaim for consideration”

# Family inherits family home

- ▶ 3 children disclaim for consideration
- ▶  $\frac{1}{3}$  interest in the family home and **cash**
- ▶ 4<sup>th</sup> child received the balance of the estate
- ▶ Family home exemption now available

# Family inherits family home

## After planning

- ▶ Taxable value – EUR1.1m
- ▶ Inheritance tax – EUR363k
- ▶ Tax saving of EUR987k

# Family inherits family home – other issues

- ▶ Italian and US properties
- ▶ Legal advice required
- ▶ Disclaimer in Italy required
- ▶ Reinvestment
- ▶ Revenue

# 4. Beneficially entitled....

- ▶ **No beneficial entitlement/interest to any other dwelling**
- ▶ Ask more questions
- ▶ Test – when do you inherit?
- ▶ How is the other property held?

# 5. Reinvestment....

- ▶ First house plan at a low value
- ▶ Accumulating the benefit
- ▶ Dad, James gifts property to daughter Zoe in 2012
- ▶ In 2012 Zoe availed of the family home exemption
- ▶ In 2015 Zoe wants to move, within 6 year period





# Reinvestment example

- ▶ New house cost EUR950k, Zoe hopes to get EUR700k for her existing home
- ▶ James provides EUR700k to Zoe as a loan until she repays James once the first house is sold
- ▶ James purchases 26% of the house for EUR250k
- ▶ James gifts the 26% to Zoe after 3 years

# Tax issues on reinvestment

- ▶ No gift tax on transfer and threshold preserved
- ▶ All proceeds from sale of house must be reinvested

## Other considerations

- ▶ 1% stamp duty on transfer
- ▶ CGT on any uplift in value
- ▶ Free use of the property

# Revenue

- ▶ Reporting
- ▶ Records
- ▶ Audit – what to expect
- ▶ Revenue questionnaire



# Opportunities – questions to ask

- ▶ What knocks someone out of the exemption?
- ▶ Question the legal structure of the property
- ▶ Avail of the exemption more than once
- ▶ Misconception that you cannot move
- ▶ Misconception that Will trusts are complicated

# Summary

- ▶ Tax Free
- ▶ Does not affect lifetime thresholds
- ▶ Anyone can use the exemption
- ▶ Applies to any home anywhere
- ▶ No limit on value and no limit to the amount of times it can be used

*Thank You*



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