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INTRODUCTION

This paper will give an overview of pension structures, how they have evolved as an estate and wealth accumulation planning tool and how they can tie in with capital tax planning particularly in the context of business exit. I will address in particular the many recent changes which have significantly changed the pension's landscape and will also give an update on some relevant aspects of capital taxes.

I do not intend to cover all the technical aspects of pensions as this would be beyond the scope of this paper and I am also conscious that many attendees would not deal with pensions every day. I have tried however to look at areas which would in my view be most relevant for members of STEP.

BACKGROUND

Pension structures vary significantly in terms of legal form, benefit structures and in terms of the specific tax legislation applicable.

What are the main characteristics of pensions?

In essence a pension is an arrangement where an individual sets money aside to provide funds on retirement. Favourable tax rules act as an incentive to do this. I will go into more detail on this in the course of the paper.

Pensions are subject to certain restrictions on the amounts that can be contributed to them in a tax efficient manner

A. Personal Contributions are limited to a scale of 15% to 40% of income (maximum €115,000) as follows:

Age	Contribution
Under 30	15%
30 – 40	20%
40 – 50	25%
50 – 55	30%
55 – 60	35%
Over 60	40%

This limitation is offset by a number of other factors:

- These contributions are tax deductible
- In relation to Occupational Pension Schemes these amounts can be supplemented by virtually unlimited funding by the employer (subject to the funding cap discussed below)

B. A further limitation exists in relation to the nature of the benefits. Some structures, particularly defined benefit occupational pension schemes for employees, have retirement benefits emerge primarily in income form. This means that when someone accesses their retirement benefits, they only have access to a source of income (i.e. an annuity) and do not have access to a capital asset.

C. A third limitation is that in in most cases benefits cannot be accessed until age 50 /60.

All of these negatives need to be considered in the light of the positives. In addition to tax relief on contributions pensions are entitled to:

1. Tax free cash on retirement
2. All or a substantial portion of the fund free from income tax on death before retirement
3. Potential, on death after retirement, for assets to transfer to children free from Capital Acquisitions Tax.
4. Exemption from Income Tax in respect of income derived from investments or deposits.
5. Exemption from Capital Gains tax on investments by the scheme.
6. Automatic tax relief on contributions paid by an employer.
7. Tax relief on personal contributions up to 15- 40% of allowable remuneration.
8. No benefit in kind on employee in respect of employer contributions to occupational pension schemes..
9. Tax relief at source through the “net pay” arrangement.

It is very important to note that there have been a lot of changes in this area recently, particularly in this year’s Finance Act and I will expand on these further.

What are the main types of pension arrangements?

For completeness it is worth noting that pensions are broadly defined as either state funded or private. The former would include social welfare pension benefits and public sector/local authority pensions. However these generally do not have a capital value and are therefore not amenable to transmission on death. I will deal therefore with private pensions in more detail.

In general terms, funded pension schemes can be characterised either as:-

(i) Occupational Pension Schemes which are established by an employer for the benefit of employees. A key subset of these comprises Self Administered Schemes (SAPS) which includes Small Self Administered Pension Schemes (SSAPs); A key feature of almost all Occupational Pension Schemes is that they are established under trust. This has an important bearing on the security of the relevant assets as we will see later on.

In addition the existence of a trust structure means that the benefits to be derived from such a scheme may not necessarily form part of the estate of a deceased but are capable of passing directly on foot of the benefit clauses of the trust. It should be noted that in many cases the estate is included as a possible beneficiary so executors should still make enquiries in relation to such schemes.

(ii) Personal Pensions which are effected by individuals (either self employed or employees not covered by the first category of funded schemes) for their own benefit. A key element in this area of the market is the type of Personalised Pensions that have been developed in the last few years;

Most Personal Pensions are established as policies of insurance. The one exception to this is in relation to group schemes established for particular occupations (the Law Society Scheme is a good example) which are typically established under trust. The comments above in relation to Occupational Pension Schemes therefore can also apply to such benefits.

(iii) Personal Retirement Savings Accounts (PRSAs) which are a contract similar to the Personal Pension but with easier access for employees and additional controls in relation to costs etc. Such assets are part of the deceased's estate.

(iv) Approved Retirement Funds (ARFs) which are funded by monies transferred from one or both of the first three structures.

Revenue Approval

One of the key aspects is that formal approval must be obtained from the Revenue in relation to all types of schemes.

Section 772(1) Taxes Consolidation Act provides a mandatory regime under which approval must be granted by the Revenue Commissioners to an occupational pension scheme. However, Sub-section (4) then goes on to provide:

(a) The Revenue Commissioners may if they think fit having regard to the facts of a particular case and subject to such conditions, if any, as they

think proper to attach to the approval, approve a retirement benefit scheme for the purpose of this Chapter, notwithstanding that is does not satisfy one or more of the prescribed conditions.

This discretionary power of the Revenue Commissioners has been utilised quite extensively and the rules which are applied by Revenue to govern schemes is set out in the Revenue Pensions Manual.

Self Administered Pension Schemes

It is worth setting out some specific details of self administered pension schemes as these would be most commonly found when dealing with directors of family owned businesses.

Small self administered schemes are particularly suitable for owner-managed businesses. It is common that they are set up with one member who then has choice over the underlying assets in the fund (subject to restrictions). This is in contrast to most other types of pension arrangements where funds are pooled and are typically subject to prudent investment restrictions

Similar to other defined contribution type schemes SSAPs can transfer to an Approved Retirement Fund (ARF) on retirement.

One of the key aspects of the ARF regime is that it allows the pension holder to create a capital asset on retirement which is capable of being inherited on death. This contrasts with a situation where an annuity is acquired on retirement which then ceases on the death of the member.

The definition of a small self administered scheme under Revenue rules involves two separate tests. Meeting either of these means the scheme is a small self administered scheme.

1. The scheme has less than 12 members (excluding certain staff with small benefits included to “make up the numbers”)
2. 65% or more of the fund is attributable to 20% Directors, their spouses or dependents.

A number of restrictions apply to these kinds of schemes for example:

- Each scheme must have a Pensioneer Trustee
- Annual accounts and triennial funding reviews must be submitted to the Revenue
- Various Investment Restrictions apply.

Revenue Pension rules preclude certain activities by the trustees of the scheme. The following are prohibited:

- Loans to beneficiaries
- Purchase of an asset from a beneficiary
- Sale of asset to a beneficiary
- Acquisition of residential property or holiday property and the use of same by the beneficiary
- The acquisition of shares in a closed company or overseas equivalent of which the beneficiary is the participator
- Acquisition of property and letting of same to the employer company.

These prohibitions were developed by Revenue under the discretionary approval powers referred to earlier and are outlined in Chapter 19 of the Revenue Pensions manual. They have now been supplemented by (or possibly replaced by) statutory rules that impose a tax charge on these types of transactions.

These statutory rules apply not just to transactions involving the beneficiary but also deal with persons connected with the beneficiary. The test of connection is set out in Section 10(2) of the Taxes Consolidation Act which provides:

"For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the context otherwise requires, any question whether a person is connected with another person shall be determined in accordance with sub-sections (3) to (8) (any provision that one person is connected with another person being taken to mean that they are connected with one another)."

The section proceeds to outline a range of connected persons including relatives of the individual concerned and those of his spouse.

Confusingly both the statutory rules and the Revenue practice rules are outlined together in the revenue Pensions manual without any guidance on how these will work in practice. For example - is a loan to the beneficiary prohibited under paragraph 19.4(i) or taxed under 19.4(vi)? Or both?

Current Revenue practice seems to be to use the statutory rules only but it may be possible for them to apply both sets of rules in certain cases. This could result in the withdrawal of approval of the schemes (with a claw back of tax reliefs granted) under the discretionary rules and the imposition of an additional tax charge under the statutory rules.

Approved Retirement Funds

Approved Retirement Funds (ARFs) were created by the Finance Act of 1999. They are intended as a replacement for annuities. Essentially they permit an individual to transfer pension benefits into an ARF and manage it on a drawdown basis. The assets in the ARF are held on behalf of the beneficial owner by a Qualifying Fund Manager (QFM). Similar to other assets they now have a capital value and are capable of being inherited. Formerly pensions only provided a source of income on retirement and were not capable of being transmitted on death (save for some limited exceptions).

An ARF is not strictly regarded by Revenue and other regulatory bodies as a pension. It is a vehicle for holding the benefits to which the member is entitled on retirement. When someone retires if their pension allows it they can take 25% of their pension fund tax free and the remaining amount is transferred to an ARF.

A certain portion of the ARF may need to be allocated to a particular type of ARF called an Approved Minimum retirement Fund (AMRF). This is required when an individual does not have pension income in excess of 1.5 times the State Social Welfare Pension. The total sum required to be paid into an AMRF is approximately €120,000 (10 times the State social Welfare Pension)

AN AMRF automatically becomes an ARF at age 75.Under the changes introduced by Finance Act 2011 an AMRF automatically comes to an end earlier than this if the required income level is reached. Transitional provisions exist for 3 years for AMRFs that predate this change.

A key feature of the AMRF is that benefits cannot be drawn down from it. Conversely it isn’t subject to the mandatory drawdown requirement of 5% that applies to ARFs where the beneficial owner is 61 or over.

For Probate purposes it is treated the same as an ARF.

Tax Treatment of ARFs

Such funds are exempt from Income Tax and Capital Gains Tax in the same manner as other pension funds.

Income Tax is imposed on most withdrawals under the PAYE system.

An ARF can transfer to a spouse on a “step into the shoes” basis i.e. no tax is imposed on the transfer itself but the spouse will pay tax on subsequent withdrawals on the same basis as the deceased.

Exemption from CAT applies where the proceeds of an ARF are inherited by a child over the age of 21 in accordance with Section 85 CATCA, and the inheritance is taken under the will or on the intestacy of the disponer.

It is important therefore to ensure that a will of a disponer correctly deals with this asset.

Note that a receipt by a child over the age of 21 of assets from an ARF is effectively subjected to income tax. This is imposed at a flat rate of 20% on the fund.

Although this is not technically an inheritance tax it is possible for a section 72 policy to be utilised to pay it.

A child under the age of 21 is exempt from income tax but is potentially liable to CAT (subject to normal exemption limits etc.).

An ARF is subject to a requirement for an annual drawdown to be taken from age 61 onwards equal to at least 5% of the fund value. This drawdown is subject to income tax in the normal way.

Murtagh Case

Last year there was a significant amount of commentary in relation to a case where a receiver was appointed in relation to various assets of Brendan Murtagh including his ARF. The judgement has not been reported. The case made the news as the conventional view was that pensions were not vulnerable to creditors in the event of personal insolvency.

Whilst the absence of a reported judgement makes comments on this matter difficult it is possible to distinguish some reasons why an ARF may have been treated differently to other types of pension:

1. An ARF is normally not established under trust. There is no absolute prohibition on this and at least one provider has utilised a unit trust structure for all its ARFs since inception.

2. An ARF is not regarded officially as a pension. This view has been stated by the Minister for Social Protection in the Dail and by Revenue in relation to Double Tax Treaty matters and in relation to the applicability of PRSI on an ARF drawdown.

   Interestingly the Financial Regulator has expressed the view that deposits held in an ARF do not qualify for the €100,000 protection afforded to individuals etc. because it is a pension benefit.

3 The ARF can be regarded as the “assets” of the beneficiary. Section 784A (1) (b) states as follows:

> (b) For the purposes of this Chapter, references to an approved retirement fund shall be construed as a reference to assets in an approved retirement fund which are managed for an individual by a qualifying fund manager and which are beneficially owned by the individual.

As against this it should be noted that:

1. It is possible for the ARF to be structured as a trust
2. The portion of the benefit that is held in an AMRF is typically locked away until age 75
3. It is not clear that the legislature intended to remove creditor protection from such benefits.

For those that are concerned about the potential legal exposures of an ARF it may be possible to structure the benefit differently. This can be done in one of two ways:

1. For benefits that have not yet been transferred to an ARF it may be possible to transfer them to another structure with a higher level of security attaching to it. For example a PRSA can, in appropriate circumstances, replicate many of the positive benefits of an ARF whilst being seen as more secure than an ARF.
2. Where an ARF already exists it may be possible to structure the ARF investments themselves in order to enhance the security of the ARF.

RECENT CHANGES TO PENSION LANDSCAPE

As many people will be aware rules around pensions have significantly changed. I am going to mention these but also give examples of planning opportunities both before and after the changes

1 Change in Personal Fund Threshold

The pension fund threshold on retirement for tax purposes, known as the Standard Fund Threshold (SFT), is now set at €2.3 million. If the amount of an individual’s pension fund exceeds that, the excess is subject to income tax at 41% within the fund. In addition the withdrawal of benefits from the fund will trigger additional tax charges under the normal income tax rules.

This results in an effective rate of 69% to 72%. Thus avoiding this eventuality is important.

This is in contrast with a SFT of just over €5.4 million which applied before the Budget.

Individuals with pension rights whose capital value exceeds the €2.3 million figure on 7 December 2010 can apply to claim a Personal Fund Threshold (PFT).

A PFT may apply if, on 7 December 2010, the capital value of an individual's pension rights drawn down on or after 7 December 2005 (i.e. crystallised pension rights), if any, when added to any uncrystallised pension rights the individual may have, as valued on 7 December 2010 (i.e. pension rights which the individual is building up but has not yet become entitled to) is greater than €2.3 million. However, in no case may a PFT be applied for that exceeds the level of the previous SFT of €5,418,085. It is worth noting that when the Fund limit was first introduced at €5m in 2005 (which was increased incrementally to €5,418,085) it was also possible to apply for a PFT at that time if the relevant benefits exceeded €5m. Thus some individuals would still have PFTs from that time which exceed €5.4m. These remain valid.

It is important to note that an application for this PFT must be received by Revenue by 7 June 2011 (i.e. within 6 months of the budget date)

2. Change to maximum tax free lump sum

Since 1 January 2011, tax free lump sums on retirement have been capped at €200,000.

Formerly it was possible to obtain a tax free lump sum of 25% of the PFT which could be as high as around €1.35 million.

If someone receives a lump sum on retirement in excess of €200,000, the portion between €200,000 and €575,000 will be taxed at the standard rate of income tax in force at the time of payment, currently 20%. The remaining portion will be taxed at the recipient's marginal rate of tax.

A key planning point therefore is to ensure that any individual who is eligible has availed of the opportunity to avail of a PFT.

In assessing the value of an individuals entitlement it should be noted:

1. The relevant date is 7 December 2010
2. All an individual's pensions (other than Social Welfare Pensions) are included in the calculations including certain benefits already in payment.
3. The valuation rules vary for different types of benefit and may not simply be the value attributed to them by the relevant institution that administers those benefits i.e. the value for PFT purposes may be higher or lower.

3. Earnings Limit

As mentioned earlier, the amount which can be contributed on an annual basis is determined by the earnings limit along with the percentage limits governed by the member's age. This earning limit was reduced from €150,000 in 2010 to €115,000 for 2011. This means that the maximum tax relievable pension contribution that can be made in 2011 is €46,000 i.e. €115,000 @ 40% (assuming the individual is aged 60 or over).

In addition, the earnings limit for 2010 is deemed to be €115,000 in respect of contributions that are paid in 2011 but which the individual elects to have treated as if paid in 2010.

It is important to note that this earnings limit does not apply to employer contributions. A key element of planning therefore will involve investigation of the manner in which personal contributions can be reduced or eliminated in favour of employer contributions.

4. Access to ARF

Perhaps the only positive aspect of this year's pension changes is the extension of access to the ARF regime to all members of defined contribution arrangements.

The only persons, outside the public sector, denied access to an ARF therefore are those with Defined Benefit schemes. A key planning issue for holders of such benefits will be to decide whether to transfer away from the benefit of the "guarantee" inherent in a defined benefit scheme into a defined contribution scheme in order to access this option (and to convert the pension benefit into an inheritable asset). Unfortunately there isn't a simple answer as to whether this is a good or bad idea – it depends on the circumstances of the case – and it is necessary to look at a range of surrounding circumstances including:

1. The value of the "guarantee" particularly as regards the solvency of the scheme and the employer
2. Where the individual ranks in terms of priority within the scheme
3. What the value of the transfer will be
4. What the personal circumstances of the individual is

There were some other changes in relation to ARFs in the recent Finance Act. The set aside requirement with regard to the funding of the AMRF is now around €120,000. It was formerly €63,500.

The specified or guaranteed income limit of €12,700 per annum is being increased to 1.5 times the maximum rate of the State Pension (Contributory) bringing the "specified income" limit to close on €18,000 per annum.

The guaranteed income requirement, if not satisfied at the time of retirement may be satisfied at any time after retirement, at which point the Approved Minimum Retirement Fund (AMRF) becomes an ARF.

As a transitional measure, the current guaranteed income requirement of €12,700 per annum will continue to apply for a 3 year period in the case of individuals who have already retired. If they satisfy the existing requirement within 3 years (of the 2011 Finance Act becoming law) their AMRF becomes an ARF. After this 3 year period, the new higher guaranteed income test referred to above will have to be satisfied.

ARFs suffer an imputed annual drawdown which means that unless a minimum amount is drawn down every year, the holder is deemed to draw it down and subject to income tax accordingly. That percentage increased from 3% to 5%.

As mentioned earlier it is possible in certain circumstances for PRSAs to offer a viable alternative to an ARF. This avoids both the AMRF requirement and the compulsory drawdown requirement. In addition the treatment of the benefits on death can be more favourable.

5. Civil Partnership implications

It is worth noting that the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2009 also impacts on pensions. Where a pension scheme provides for benefits to spouses, these will also apply to civil partners. In addition the Act also extends the pension adjustment order regime to the dissolution of civil partnerships

PLANNING OPPORTUNITIES

It is worth remembering that other planning opportunities still exist in the context of pensions.

1. Retirement and Succession Planning

Clearly, retirement always provided planning opportunities. It is worth emphasising that those opportunities are still there, notwithstanding the changes introduced in this year’s Finance Act.

This is perhaps best illustrated by the case of a client which we dealt with recently. He was a 90% shareholder in family company with 10% owned by son who works in the business and is important to it.

His objectives were to provide for himself in retirement and ultimately to transfer the business to son. There was significant under-funding of pension in the past, with some cash now available in the company (€1.5 million) and more cash may be available in the future.

In very broad terms the proposal was as follows:

- Funding of scheme to provide in part for back-service for €750,000. Importantly this did not take him over the €2,300,000 i.e. the new standard fund threshold.
- Buy-back by company of shares for €750,000 which coincided with the CGT retirement relief threshold. I will discuss this in more detail below. However anyone in the position of being able to utilise retirement relief should urgently consider doing so in next year.
- Tax-free cash of 25% of fund. The changes introduced as discussed above impacted here. The amount was tax free up to €200,000, taxed at 20% up to €575,000, and taxed at the marginal rate above that.

This is the simplified version of advice, but there were some complicating factors, including:

1. The individual was divorced and a Pension Adjustment Order was in place, which had to be taken into account.
2. Early retirement (under 60) was required so the member had to get rid of all shares, also for purposes of trade benefit test to avail of CGT treatment on the redemption of the shares the individual could only have a limited involvement in the business in the future.
3. Corporate governance issues and future management all had to be considered.
4. There were other children so succession issues such as Section 117 and Section 63 of the Succession Act needed to be addressed.

However as this case illustrates there is still a key role for pension planning as an element of succession planning. Many business owners have not funded pensions whilst building the business up because cash needed to be ploughed back into the business. However, on exit an opportunity exists to make up for lost time. There is still that opportunity.

The case initially came as a query in relation to pension, but ultimately became a very significant piece of work and achieved a successful business retirement and succession.

2. Pension investment:

Another area where pension planning is still very useful if in the context of investment.

Because of the lack of credit in the market, private pensions are increasingly being looked at as a source of funding for investment.

As mentioned earlier there are a number of rules around this:

- Revenue limits on acquisition of equity in private companies.
- Need to maintain liquidity for certain events, such as death and early retirement.
- Sole purpose rule – sole purpose of a pension scheme is to provide retirement benefits, so the investment must not be for any other reason.
- Self-dealing / connected parties investment – a sub-set of above.
- Certain loans.
- Pride in possession articles.

However, it is still possible to work within these rules on an individual or collective basis.

3. Incorporation

As I mentioned above there is a gap between what self-employed individuals can contribute to pensions and what can be contributed for those with occupational pension schemes i.e. by an employer on behalf of an employee

That gap became more acute in this year's Finance Act as the annual earnings limit has now been reduced to €115,000.

This has a significant impact on those high-earning professions left e.g. medical professionals in particular, but also solicitors and accountants.

Solution

Put in place a corporate structure so that business owners can take advantage of the corporate pension regime. Over the last several years we have implemented corporate structures for many medical and other professionals.

What are the benefits?

- Pension – company can contribute on basis of salary, length of service, age, other pension benefits, annuity rate, but figure come to is nothing like Revenue limits for self-employed.
- Tax – even at most basic level of company contribution – tax relief on PRSI & universal social charge worth 11% - so €3,162.50 on max contribution of €28,750 for someone in 40s

It is necessary of course to consider the regulatory aspects. In particular it is not possible for certain professions to carry on their professional activities through companies. Other difficulties arise in relation to the proper treatment of goodwill. (A recent article in the Irish Medical Times highlighted many of these issues for medical practitioners.)

However the fundamental planning point remains that accessing employer based pensions is generally more tax efficient and should always be considered.

4. Individualisation

A planning idea that is related to the concept of incorporation is the question of employment of a spouse. Many self employed individuals can and do make use of a spouse as an unpaid employee of the business or practice. However for pension purposes that spouse can have the employment formally recognised through the payment of an appropriate wage. This in turn allows pension benefits to be provided by the employer.

This may well appeal to those self employed who are unable or unwilling to avail of the incorporation option.

5. Estate Planning

The use of pension schemes also offer additional estate planning opportunities including:

1. The opportunity to diversify assets away from a single trading company to more easily share them amongst the next generation
2. Similarly this allows active trading assets to effectively be transferred into passive investment assets
3. Properly structured such assets are ring fenced away from creditors (whereas trading assets would not be) creating greater security for the beneficiaries
4. Benefits emerging from a pension can do so more tax efficiently in various cases. For example the tax imposed on ARF assets inherited by children over the age of 21 is 20%. If instead these were subject to CAT the applicable rate would be 25%.
5. Pensions also offer the potential to protect assets from claims under the Family Law acts. Uniquely the relevant legislation includes the option to include a clause in a Pension Adjustment Order which precludes a former spouse from returning with a top up claim in the future

CAPITAL TAX ISSUES

Currently there are a number of tax reliefs which facilitate the transfer of business assets from one generation to the next.

The principal reliefs which are familiar to the tax practitioners who advise on business succession are CGT retirement relief and CAT business property relief.

Provided the conditions are satisfied the transfer of business from a parent to a child (which includes a step-child, a child of a deceased child or a working nephew/niece) can be done free of CGT and the taxable value of relevant business assets is reduced by 90% for CAT purposes. The assets need to be retained for 6 years after the transfer.

These are extremely valuable reliefs.

This kind of work will often involve tax efficient cash extraction. This can involve pension planning and possibly reorganising the corporate structure in advance of transferring assets (as broadly speaking only trading assets can avail of the reliefs).

The Commission on Taxation report of 2009 proposed that the reliefs mentioned above should be restricted.

These proposals were not introduced in this year's Finance Act, however they may well be introduced next year, particularly in the light of the comment in the Four Year Recovery Plan which stated that CGT, CAT and stamp duty reliefs are to be abolished or greatly restricted from 2012.

So what were the specific proposals?

CAT. The Commission recommended that the taxable value of the assets be reduced by just 75% instead of 90% and that the reduction is to be capped at a maximum of €3 million. Any value in excess of the reduction would be taxed at the full 25% CAT rate.

CGT. If the Commission's recommendation is implemented, that will be restricted in line with the CAT limit, so just the first €3 million will be exempt and the rest subject to the full 25% CGT rate.

The table attached illustrates two companies with a value of €4,500,000 and a value of €6,000,000. I am assuming a transfer from a parent to three children

PRE COMMISSION CHANGES

	Company A	Company B
Value of shares passing	€4,500,000	€6,000,000
Less: consideration paid	Nil	Nil
Gift element	€4,500,000	€6,000,000
Less Business Property Relief	(€4,050,000	(€5,400,000)
Taxable value	€450,000	€600,000
Less Small Gift Exemption	(€9,000)	(€9,000)
Less Group 1 threshold	(€996,252)	(€996,252)
CAT payable at 25%	Nil	Nil
CGT to be paid	Nil	Nil
Stamp Duty	€45,000	€ 60,000
Total Tax cost	€45,000	€60,000
Group 1 threshold remaining	€546,252	€396,252

POST COMMISSION CHANGES

	Company A	Company B
Value of shares passing	€4,500,000	€6,000,000
Less: consideration paid	Nil	Nil
Gift element	€4,500,000	€6,000,000
Less Business Property Relief	(€3,000,000)	(€3,000,000)
Taxable Value	€1,500,000	€3,000,000
Less Small Gift Exemption	(€9,000)	(€9,000)
Less Group 1 threshold	(€996,252)	(€996,252)
CAT payable at 25%	€125,937	€498,687
CGT to be paid at 25%	€374,683	€749,683
CGT/CAT Credit	(€125,937)	(€498,687)
Stamp Duty?	€45,000	€ 60,000
Total Tax cost	€419,683	€809,683
Group 1 threshold remaining	Nil	Nil

Conclusion

Of course it is not possible to be definitive as to what will be included in future budgets and finance acts and the above table should be considered in that regard. However the Commission's conclusions along with the comments in the four year plan should be taken seriously by advisers whose clients are considering selling their businesses or passing them on to the next generation.