Leaving a Legacy – where there's a Will there's a Way.

Mehmed "Meša" Selimović, a Yugoslav writer, quoted that "Death is a certainty, an inevitable realisation, the only thing that we know will befall us." An aspect of our lives, one which is often difficult to face, is our own mortality. We know none of us will live forever, we know it is inevitable – however, with improvements in medical science, the good news is that we are living longer than in previous years.

When we get over the stumbling block of mortality, it is important to determine what would happen in the event of our death: what happens to the assets that we own and who would receive them? Is there provision made for the future wellbeing of our loved ones, their care and their needs? One way of preparing for this is to create a Will.

The creation of a Will allows us to decide who gets what in the event of our death because, in the absence of a Will, the Rules of intestacy will apply – meaning your estate is distributed in accordance with the law. The Rules of Intestacy are inflexible and don't consider what your wishes would have been.

One of the main purposes of a Will is if there are young children whose future care would need to be catered for. A Will can specify who their guardians would be in the event of their parents' death and how they are to be looked after. Of course, from a financial perspective, a Will can also outline your wishes in relation to the assets you have, some of which are examined below.

Protecting your dependants through your Will

If you have individual protection policies in place with a life company, these can be included in your Will. These protection policies would be put in place to insure against loss of income for your family, especially if you are the main breadwinner in the home. The policy may cover the amount of income and make provision for other payments that would have to be considered upon your death.

These protection policies can be included in your Will to ensure that your spouse is the direct beneficiary of those policies. The policies can also be structured to allow for portions of the sum insured to be payable to your children, subject to inheritance considerations under the Group Threshold for Capital Acquisition Tax (CAT) purposes and the overall asset value received by the children.

A policy to cover these potential inheritance tax liabilities can also be covered in your Will. Where a policy has been set up with a view to paying off inheritance tax, under Section 72 of the CAT Consolidation Act 2003, it can be nominated through your Will and your solicitor can advise you on how this can be achieved.

Consideration to how a protection policy is initially set up is important as Probate would be applicable in cases where the protection policy is owned individually, which may cause delays in paying out. An alternative here would be to have the policies set up under trust. If a policy is being set up to make a payment directly to a child, the policy can be set up under General Trust, which means the sum insured is payable directly to the beneficiary without Probate being applicable.

Further to this, if the policy is being set up for the purposes of Section 72 to pay off inheritance tax, a Section 72 Trust arrangement can also be arranged to ensure the sum insured is paid directly to those who are liable to that inheritance tax.

The Benefits of a Discretionary Trust

A Discretionary Trust can be created through a Will and will take effect upon a person's death. It is a mechanism for managing the money inherited by a minor child who is not able to manage the money themselves. The trustees may manage the assets for a minor child inherited from a grandparent or any family member.

Another advantage of creating a trust through a Will is to manage assets and funds for a person with a disability who may need funds for their future care and welfare.

A Discretionary Trust set up through a Will is one where the appointed trustees have the discretion to apply any income or capital inherited by a beneficiary for the benefit of that beneficiary. The beneficiary of a Discretionary Trust does not have the right to receive any benefit from the trust unless and until the trustees make a payment to that beneficiary. This can be done where there is a specific age set out in the Trust at which point the beneficiary will receive the benefit, for example, at age 21 years.

In addition, a Discretionary Trust can provide a structure that is flexible for parents with a child or adult child with special needs who may not have the capacity to hold money or assets directly or to manage that money or asset.

Setting up a Discretionary Trust

Setting up a Discretionary Trust in Ireland involves a few key steps. First, you must identify the purpose, such as managing assets for minor children, providing for a person with special needs, or protecting family wealth.

When you draft the trust deed outlining the terms and conditions, include the names of the settlor, trustees, and beneficiaries, as well as the trust's purpose and asset management details. It is important to choose trustworthy and competent trustees to manage the trust.

After you transfer the assets to the trustees, they must manage the trust according to the deed, keep accurate records, file tax returns, and make discretionary distributions to beneficiaries.

It is also a requirement to register these trusts on the Central Register of Beneficial ownership of trusts (CRBOT). To register a trust, log in to the Revenue Online Service (ROS) portal, complete the registration form, and submit it along with any required supporting documents.

Managing a Discretionary Trust with an Investment Bond

One of the options open to trustees to manage what money has been passed to the beneficiary via the trust, is to affect an investment bond with a life insurance company. Investment bonds offer flexibility in investment choices, allowing trustees to select from a range of funds and strategies that align with the trust's objectives and risk tolerance. Additionally, since the life insurance company manages and invests the money, and the structure of investment bonds simplifies record-keeping and reporting, the burden of responsibility on the trustees is significantly reduced.

Facing our mortality is a challenging yet essential part of life. Yet, by taking proactive steps, you ensure that your loved ones are cared for, and your assets are managed according to your wishes. Including protection policies and trusts in your estate planning not only safeguards your family's future but also provides you with peace of mind. Knowing that you have thoughtfully prepared for the inevitable allows you to live with the assurance that your legacy will be honoured, and your beneficiaries will be supported.

Important note: Please note that this TechTalk does not constitute tax advice. Where possible we would suggest that clients consider getting their own professional tax advice based on their own individual circumstances and if necessary, contact the Revenue directly.

If you have further questions on any aspect of this briefing, please contact your Broker Consultant or the TechTalk Team on 01 209 2020 or techsupport@zurich.com

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