Preserving the family compound: Ireland

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Abstract

The article explores the legal, tax, and structuring principles that are particularly relevant to overseas investors in Irish real property. The focus is primarily on property used by family members, rather than investment property. It explores some general principles of Irish succession law and relevant law of real property. It then moves on to an exploration of a tax efficient basis for investing in real property assets. It explores the use of trusts as ultimate ownership vehicles for Irish real property, and other ownership structures which can be used. Finally, it addresses the domestic taxes applicable to owners and occupants of real property.

What is a family compound?

A family compound comprises a single or multiple Irish real property assets of a family, howsoever held, usually being residential and/or agricultural property. It may be that the family compound is directly held, or that it is held indirectly through a family holding company or trust, for which structuring is often driven by the tax profile and commercial activity of the family members. This article explores the special features which assist or limit the preservation of an Irish family compound and considers how legal and tax measures in Ireland impact the family compound.

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What legal/taxation/structuring principles facilitate or hinder the preservation of a family compound in each relevant jurisdiction?

Ireland, as a common law jurisdiction, has a body of judge-made law which provides scope for evolution in the interpretation of legal principles and statute. In addition, Ireland's relatively young Constitution, dating from 1937, enshrines certain property and family law rights and entitlements at a supra-legislative level.

Social policy and the historic link between the Catholic Church and State in Ireland have also influenced the shape of legal and taxation structures which impact family compounds in Ireland. The Irish Family Law Acts and the Capital Taxes Acts operate to both hinder and facilitate the preservation of a family compound in Ireland.

Ireland is and continues to be a Member State of the European Union (EU); however, Ireland is not a party to the EU Succession Regulation.[1] The primary legal principles and tax heads which affect family compounds are in turn dealt with below.

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1. Reg (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (the 'EU Succession Regulation').

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Property rights and the inviolability of the dwelling

The Constitution protects personal rights of the citizen including property rights (Article 40.3). It also specifically acknowledges the rights of citizens to the private ownership of external goods (Article 43.1). In addition, the state guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property (Article 43.2.1). This is qualified in the Constitution by the recognition that the state may regulate the exercise of such rights having regard to the principles of social justice and the exigencies of the common good (Article 43.2.2). One example of such a limitation is the existence of compulsory purchase by the state, which usually takes place to allow for the development of public infrastructure.

The Constitution also declares that the dwelling of every citizen is inviolable, and shall not be forcibly entered except in accordance with the law (Article 40.5). This means that no one, including law enforcement officers, may enter a residence without a warrant or other legal authority to enter. The Constitution does not specifically enumerate a right to privacy, but the Irish Courts recognize that the personal rights in the Constitution (Article 40.3) imply a right to privacy.

Irish succession law

Ireland has had a common law system for many centuries. As a matter of private international law, common law domicile is the connecting factor which applies Irish succession law to the worldwide personal assets of Irish domiciled persons and the Irish situate real property of non-Irish domiciled persons.

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As Ireland has not opted into the EU Succession Regulation, it is expected to be considered a 'third state' for the purposes of the EU Succession Regulation and continues to apply its private international law rules.

Succession rights

The Succession Act 1965 ('SA 1965') governs Irish succession law and provides that by virtue of his or her status as a spouse, a widow or widower is entitled as of legal right to a share in the estate of his or her deceased spouse (the 'LRS'). If a testator dies leaving a spouse only, then that spouse is legally entitled to one half of the estate (s 111(1) SA 1965). If a testator dies leaving a spouse and children, the spouse has a legal right to one-third of the estate (s 111(2) SA 1965). Thus a surviving spouse is provided for regardless of the terms of the deceased spouse's will, provided he or she makes the necessary election between provision made under the will and the LRS within the strict statutory time limits (s 115 SA 1965). If no provision is made by will, the surviving spouse is automatically entitled to the LRS. On intestacy, a surviving spouse is entitled to all of the estate if there are no children and two-thirds of the estate if there are children (s 67 SA 1965).

Thus a surviving spouse is provided for regardless of the terms of the deceased spouse's will, provided he or she makes the necessary election between provision made under the will and the LRS within the strict statutory time limits (s 115 SA 1965)

Where the surviving spouse was ordinarily resident in a dwelling comprised in the deceased's estate, the surviving spouse may require the personal representatives to appropriate the dwelling and any household chattels in or towards satisfaction of any share of the surviving spouse or of any infant for whom the surviving spouse is a trustee (s 56 SA 1965). In the case of a family home, an appropriation may prejudicially affect any specific devise or bequest in the will.

Such an appropriation will not be made where agricultural land forms part of the estate or part of the dwelling was at the time of death used for purposes

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other than domestic purposes unless the personal representatives are satisfied that the exercise of the right is unlikely to diminish the value of the assets of the deceased or to make it more difficult to dispose of them in due course (ss 56(5) and 56(6) SA 1965).

Children may apply for greater provision from a parent's estate if disappointed with the provision made under the will (usually only on the death of the survivor of both parents) if they can prove that the parent failed in his or her moral duty to make proper provision for the applicant, whether during lifetime or by will (s 117 SA 1965).

Extinguishment of succession rights

A court may, if satisfied that adequate and reasonable financial provision exists or can be made by way of orders for other ancillary reliefs, extinguish the succession rights of either the parties to a judicial separation (s 14 of the Family Law Act 1995 ('FLA 1995')) or a divorce (s 52(g) of the Family Law (Divorce) Act 1996 ('FLDA 1996')).

As part of a decree of divorce, a court usually makes what is known as a 'blocking order', which prevents a former spouse from making an application to the court for provision out of the estate of his or her deceased former spouse (s 18(10) FLDA 1996). The court must be satisfied that proper provision was not made for the applicant spouse during the lifetime of the deceased spouse.

In granting any relief or order in a divorce case, a court will look beyond the financial contributions of each spouse (s 16(2)(f) FLA 1995 and s 20(2)(f) FLDA 1996). While such an order can be made, there is no 'clean break' divorce in Ireland and while the 'property owner' spouse is alive, the other spouse, while not remarried may return to the courts to seek additional provision by way of property adjustment orders.

Rights of qualified cohabitants

A redress scheme exists for financially dependent opposite-sex or same-sex qualified cohabiting couples who are not married, if the relationship ends as the result of death or otherwise. A qualified cohabitant is one of two adults who live together in an intimate and committed relationship (whose circumstances meet certain statutory criteria), for at least five years or for two years if the couple have had child together, per s 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ('CPCROCA 2010'). The redress scheme provides for a broadly similar range of orders as are available to married couples when they separate or divorce or on death; however, the applicant qualified cohabitant must prove financial dependence on the respondent cohabitant.

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Nature of title to real property in Ireland

Property may be held in a sole name or jointly, either under the legal concepts of joint tenancy or tenancy in common. A joint tenancy requires unity as to the possession of, extent of the interest in, timing of the acquisition of, and title to the property. This is the most common form of joint ownership between spouses, and on death the interest in property passes by survivorship to the surviving joint owner(s) and not according to the terms of the deceased's will or intestacy. Each joint tenant has an undivided equal share in the whole of the property. A tenancy in common may involve unequal ownership interests in the property or interests that were acquired at different times and each interest of each tenant in common passes in accordance with his or her will or intestacy.

Legal and beneficial title to property in Ireland may differ, as in the case where a nominee holds the legal title, such as certain trust arrangements where property is beneficially owned by minors or incapacitated individuals who cannot as a matter of law hold the legal title.

There are two registries operating separately within the Irish Property Registration Authority ('PRA')

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which record legal ownership of property in Ireland; however, Ireland is gradually moving towards a single registry. A property is characterized as either unregistered title or registered title; and freehold or leasehold. The freehold is the greatest interest a person may have in property. A long leasehold interest is considered to be a freehold equivalent. A leasehold property with less than 70 years unexpired residue of the term is not considered good marketable title; however, steps may be taken to buy out a superior landlord's interest.

The identity of the legal owner to real property appears on the deeds in the case of unregistered title and the PRA confirms the existence, date of, and parties to a deed, but not its contents. A state guarantee applies to title (but not boundaries) in the case of registered land. Most dispositions of unregistered land now require a first registration application by the purchaser/grantee, so that the property becomes registered land.

All real property in Ireland is open to potential title claims adverse to the legal owner. A successful applicant must prove that he has possessed and used the property to the exclusion of all others and without the permission of the legal owner for at least 12 consecutive years. It is incumbent on owners of a family compound to ensure that property is actively managed to avoid such claims.

Transfers of a family compound

Irish law provides for freedom of ownership, alienation, and of relative freedom of testation in relation to real property, subject to certain Succession Act protections already referred to for spouses and civil partners and rights of redress for qualifying cohabitants.

Capital Gains Tax (CGT) and Stamp Duty (SD) are relevant to all lifetime transfers of real property in Ireland, whether the disposal is voluntary or for value. SD and CGT may be relevant to transfer on a death.

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CGT

The current rate of CGT in Ireland is 33 per cent and it is payable by a person making a disposal of a property which yields chargeable gain. This is calculated by taking the base cost of the property and any allowable costs of acquisition or disposal from its market value.

Certain assets known as 'specified assets' are always within the charge to CGT, regardless of the tax residence of the person making the disposal (s 29(3) Taxes Consolidation Act 1997 (TCA)). Those of relevance to the family compound are any interest in land; or shares (other than quoted shares) deriving the greater part of their value directly or indirectly from Irish land. An anti-avoidance provision in effect since 22 October 2015 targets artificial arrangements seeking to take the disposal of such shares outside the charge to CGT. From that date, in calculating the value of such shares attributable to Irish land, any arrangement involving the transfer of non-Irish land value into a company will not be taken into account where that arrangement involves a transfer of money from a person to a person connected with the company in which those shares are held, before a disposal of the shares, whose main purpose, or one of whose main purposes, is the avoidance of tax.

Certain assets known as 'specified assets' are always within the charge to CGT, regardless of the tax residence of the person making the disposal (s 29(3) Taxes Consolidation Act 1997 (TCA))

Indexation relief is allowed under the TCA. This provides a certain allowance for inflation between 6 April 1974 and 31 December 2002. No allowance for inflation is made in respect of properties acquired on or after 1 January 2003. An allowance is also available in respect of enhancement expenditure incurred on the property during the period of ownership.

No CGT is payable by a person disposing of his principal private residence or on transfer between spouses.

CGT applies to a disposal of shares of a body corporate which derives the greater part of its value from Irish situate real property.

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If a property passes as an inheritance under a will or intestacy, the disponer's estate benefits from an uplift in value from the original base cost to the market value at the date of death of the disponer.

SD

SD is payable by the purchaser or donee of a property and the applicable rate depends of the nature of the property. SD is currently charged at 1 per cent for the first €1,000,000 of consideration for Residential Property, defined as the dwelling and a curtilage of one acre (0.404686 hectares), and 2 per cent above this (Schedule 1 of the Stamp Duty Consolidation Act 1999) (SDCA 1999).

A rate of 6 per cent SD applies to agricultural/commercial property (Schedule 1 SDCA 1999).

If the full market value is not paid, SD is payable on market value as opposed to the consideration (s 30 SDCA 1999).

SD is not payable on movable property where title passes by delivery, but is payable on all consideration payable under a contract for sale of real property.

The most common exemptions from SD relevant to the family compound are in respect of transfers between spouses (s 96 SDCA 1999) and from nominees to beneficial owners (Part 7 SDCA 1999).

SD is not payable on transfers between spouses or on the assent of a property to a beneficiary who is so entitled. SD is payable by a purchaser of a property from an estate or by a beneficiary if the terms of a will are altered.

Capital Acquisitions Tax—charging provisions

Capital Acquisitions Tax (CAT) is a beneficiary charge payable on the market value at the valuation date where property passes for no consideration, or for lower than market value, whether by gift or inheritance. Charging provisions, reliefs, and exemptions are set out below at a high level. The current rate of CAT is 33 per cent (Schedule 2 of the Capital Acquisitions Tax Consolidation Act 2003) (CATCA 2003).

Ireland applies a residence-based charge save in respect of limited pre-1999 settlements to which a domicile of settlor basis of charge applies.

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An individual who takes a gift or inheritance on or after 1 December 1999 (or in the case of a benefit taken from a trust, where assets were settled in trust after 1 December 1999) is within the charge to CAT if either:

a. the disponer is resident or ordinarily resident in Ireland at the date of the disposition; or
b. the beneficiary is resident or ordinarily resident in Ireland at the date of the gift or inheritance; or
c. the assets the subject of the gift or inheritance are Irish situate assets (ss 4 and 11 CATCA 2003).

Special rules for non-domiciliaries

Special rules exist for determining the residence of an individual for CAT purposes where that person is non-Irish domiciled. A non-Irish domiciled individual will not be regarded as resident or ordinarily resident in Ireland for CAT purposes unless he:

i. has been resident in Ireland for five consecutive years of assessment preceding the date of the gift or inheritance; and
ii. is resident or ordinarily resident in Ireland on the date of the gift or inheritance.

Acquiring real property through a non-Irish tax resident company

Acquisition by an offshore trust or other structure, through a non-Irish incorporated company, is most useful for a non-domiciliary locating to Ireland, or resident in Ireland for less than five consecutive

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years, where a gift of the property (or an interest therein) is contemplated. The relevant value can be sheltered from CAT with careful planning. The gift of shares in the non-Irish resident company holding the property must take place at a time before the disponer has been tax resident in Ireland for five years.

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If the real property is held personally, any benefit will be within the charge to CAT regardless of the number of years of Irish residence as it will constitute a benefit of an Irish situate asset.

Tax exempt thresholds

Gifts or inheritances taken by beneficiaries which are with the CAT charge, whether during lifetime or under a will or intestacy go towards their tax exempt thresholds. The thresholds vary depending on the degree of relation between the person making the gift and the beneficiary of the gift or inheritance.

All gifts or inheritances between spouses or civil partners are exempt from CAT.

In the case of gifts or inheritances from parents to children (or to the minor child of a deceased child), the Group A lifetime threshold applies and is currently €310,000. This includes adopted children, step children, and some foster children. The Group B threshold applies to gifts or inheritances from grandparents, brothers, sisters, aunts, or uncles) and is currently €32,500; and the Group C threshold applies to anybody else not covered by Group A or B and is currently €16,250 (Schedule 2 CATCA 2003).

These are lifetime limits for gifts or inheritances received from any individual within the same degree of relationship to the beneficiary as the disponer.

Discretionary Trust Tax

Discretionary Trust Tax arises on the value of assets warehoused in a discretionary trust (s 18 CATCA 2003). An initial charge of 6 per cent arises on the valuation date, being the latest of the following, and is payable within four months:

a. the date the property becomes subject to the discretionary trust;
b. when there are no principal objects under age 21; or
c. when the settlor dies.

Principal objects include the spouse of the disponer, children of the disponer, or the children of a pre-deceased child of the disponer (s 14 CATCA 2003). An annual 1 per cent charge will not be payable until the year following the year in which the initial charge arises (s 23 CATCA 2003). It is payable on the value of the assets in Trust on 31 December in each year. The initial 6 per cent charge maybe reduced to 3 per cent by way of refund of the DTT paid, if, within five years of the valuation date, the entirety of the trust property is appointed out of the discretionary trust.

There are a number of exemptions from the charge to DTT including trusts that are set up exclusively for people with certain disabilities; public or charitable purposes; and approved superannuation schemes (s 17 CATCA 2003).

Dwelling house relief

Full relief from CAT is available in very limited circumstances in respect of a gift to a dependant relative or inheritance of a disponer's main residence and a curtilage of up to one acre (0.404686 hectares). The conditions for the relief:

- require the beneficiary to have occupied the dwelling continuously as his main residence for three years up to the date of inheritance;
- provide that the beneficiary cannot be beneficially entitled to an interest in any other dwelling at the

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date of the gift or inheritance (which provides scope for tax planning and the use of a discretionary trust to ensure interests in other dwellings are divested prior to inheritance/appointment from trust); and

- require the beneficiary to remain in occupation of the dwelling or a replacement property as his main residence for six years following the inheritance to avoid clawback of the relief (s 86 CATCA 2003).

Business Relief and Agricultural Relief

Business Relief provides a 90 per cent reduction of the *taxable value* of assets the subject of a gift or inheritance to qualifying beneficiaries in respect of qualifying assets, known as Relevant Business Property (RBP) (s 92 CATCA 2003). In order to qualify as RBP, a business or a part of a business must be transferred and not simply an asset used for the purposes of that business. The legislation provides that land, buildings, plant, and machinery constitute RBP where they are, immediately prior to the gift or inheritance, used wholly or mainly for the purposes of a business the subject of the gift or inheritance (s 93 CATCA 2003). Businesses consisting wholly or mainly of the making or holding investments are excluded from Business Relief.

Agricultural Relief is another significant tax relief in the context of the preservation of the family compound, as it reduces the *market value* of the agricultural property, the subject of a gift or inheritance, by 90 per cent. The property must constitute 'agricultural property' as defined (which includes a farmhouse). The beneficiary must meet the 'farmer test', which involves an asset test and a vocational qualification or normal working time activity test. This is onerous as the beneficiary is required to spend 50 per cent of normal working time farming. In the alternative, the beneficiary must meet the asset test and lease the agricultural property to a qualifying farmer (s 89 CATCA 2003).

Both reliefs involve a clawback of the relief claimed if the relieved property is disposed of within six years of the gift or inheritance, or 10 years if development land value is involved.

CGT/CAT offset

In circumstances where a charge to CGT and CAT arises on the same event on a gift of property from a disponer to beneficiaries, relief is available in respect of CAT up to the value of the CGT paid, provided the beneficiaries retain the property the subject of a gift for two years following the gift.

Connected person rules

Market value is imposed in relation to transfers of property between an individual and a connected person, which includes the husband, wife, civil partner or relative of that individual, or the husband or wife of a *relative* of that individual or of the individual's husband or wife. A *relative*, as defined in s 10 TCA 1997, includes brothers, sisters, ancestors or lineal descendants and, for the purposes of CGT, also means uncles, aunts, nieces, or nephews. Capital losses carried forward are ringfenced in transactions involving connected persons.

In addition, certain transactions between bodies corporate and directors, employees or connected persons are subject to market value rules and involve ringfencing losses. Company law requires a pre-approval or 'whitewashing' procedure to be followed prior to such transactions.

Small gift exemption

An annual small gift exemption of €3000 from any one individual to any other individual is available to make gifts free of CAT during each calendar year, in addition to the lifetime tax exempt thresholds (s 69 CATCA 2003).

Political risk

Civil disturbance is not a concern for the owners of a family compound in Ireland today; however, in the

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past it has led to fragmentation of large agricultural land-owning estates. A privacy risk exists in relation to the operation of drones over or around the family compound.

If there are no special legal or tax features which assist in preserving a family compound, how have the challenges of preserving a family compound been advanced? What options work best?

Although perhaps not unique to a family compound, the issues discussed below are of relevance in considering the structuring of the acquisition and holding of real property within the family.

Trusts

A trust is often used to preserve the family compound. It offers some protection from creditors of financially exposed family members; family law claims; and the risks posed by immature, irresponsible, or vulnerable family members.

A bare trust involves a trustee holding legal title to assets on behalf of a beneficiary who has an absolute and immediate right to the assets. A fixed interest trust involves no discretion in the distribution of assets. Beneficiaries of the trust may have a predetermined fixed interest in a specific portion of the income or capital of the trust.

A discretionary trust is one which includes a class of potential beneficiaries in respect of whom the trustees may, but are not obliged to, exercise their discretion to appoint assets the subject of the trust.

The rules against perpetuities/accumulations/ remoteness

All trusts are subject to statutory rules under the Land and Conveyancing Law Reform Act 2009 (LCLRA 2009) dealing with perpetuities and remoteness from 1 December 2009.

Under common law, the rule against perpetuities provided that no interest in property (whatever the nature) was valid unless it vested not later than 21 years (plus any period of gestation to cover a posthumous birth) after the death of some person alive when the interest was created (the 'Perpetuity Period'). The aim of the rule was to promote the alienability of property and prevent the accumulation of income from property beyond the Perpetuity Period. This rule has been abolished for present and future instruments involving the creation of an interest in property, pursuant to LCLRA 2009.

The rule against perpetuities provided that no interest in property was valid unless it vested not later than 21 years after the death of some person alive when the interest was created (the 'Perpetuity Period'). This rule has been abolished for present and future instruments involving the creation of an interest in property, pursuant to LCLRA 2009

However, LCLRA 2009 did not have the automatic effect of making existing settlements (created prior to 1 December 2009) perpetual. An existing trust that contains a Perpetuity Period must terminate at the end of that period unless the trustees apply to court to extend the Perpetuity Period under the variation of trusts provisions afforded by ss 23–24 LCLRA 2009 (discussed below).

In addition, despite the abolition of the common law rule in relation to the creation of interests in property generally, the Perpetuity Period is still relevant for non-charitable trusts because of the rule against perpetual trusts.

The rule against perpetual trusts, also known as the rule against inalienability/remoteness/trusts of undue duration, survived LCLRA 2009 and restricts the duration of non-charitable trusts to the length of the Perpetuity Period. This rule remains applicable to unincorporated bodies, such as trustees and it is therefore necessary to specify that a trust will come to an end at the end of the Perpetuity Period. However, unlike the rule against perpetuities which focus on

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the initial vesting of an interest in the beneficiary, these rules are concerned with the duration of a trust once vested. This requires that the ultimate destination of trust property must be determined within the Perpetuity Period that the perpetuity is within 21 years after the end of the lives in being when the property is settled in trust, the identity of all beneficiaries must have been determined. It does not require title to have passed to the beneficiaries by the end of the Perpetuity Period.

The rule against perpetual trusts, restricts the duration of non-charitable trusts to the length of the Perpetuity Period

This rule against perpetual trusts does not apply to absolute ownership of property in fee simple, or absolute ownership by bodies corporate, since the owners may decide to alienate their property at any time and are not subject to any restriction as in the case of a trust.

Recent developments—extension of trust periods and inclusion of non-marital children as beneficiaries

LCLRA 2009 introduced provision for the variation of trusts in Ireland. A trustee, beneficiary, or any other person concerned (an ‘Appropriate Person’) may bring an application to court to vary, revoke, or resettle a trust or vary, enlarge, add to, or restrict the powers of trustees under the trust (an ‘Arrangement’) (s 24 LCLRA 2009). Such an Arrangement can be made for the benefit of a person with a vested or contingent interest if it has been assented to in writing by each person who is beneficially interested and is capable of assenting.

LCLRA 2009 introduced provision for the variation of trusts in Ireland

An Arrangement can also benefit a person who lacks capacity to assent to the variation, such as unborns, those whose identity, existence, or whereabouts cannot be established, or a person with a contingent interest. An application can be made in relation to a trust at any time whether by will, settlement, or other disposition.

Notice in writing must be given to the Irish Revenue Commissioners at least two weeks before any court hearing of an application to vary any settlements. The Revenue Commissioners must be satisfied that the variation is not for the purpose of the avoidance of tax.

Until recently, there had only been one reported successful case under the Irish variation of trust legislation before the Irish High Court which related to the variation by the intended beneficiary of a life insurance policy. In an extempore decision of McDonald J in June 2018, (in which Matheson acted for the applicants) the High Court approved the variation of a number of settlements which ultimately control an Irish estate. In doing so, McDonald J quoted with approval a number of recent decisions concerning variations of trusts under the Variation of Trusts Act 1958 of England and Wales.

This is a welcome decision, as the application approved an extension of the term, and an expansion of the class of beneficiaries, of the settlements.

Partnerships and limited partnerships

All partnerships in Ireland are transparent from a legal and tax perspective. They are often used for estate planning purposes as they are not subject to more onerous taxing provisions applicable to trusts.

Partnerships in which all partners have unlimited liability are established under the Partnerships Act 1890.

Limited partnerships (LPs) are established under the Limited Partnerships Act 1907. The advantage of LPs from the perspective of preserving a family compound is that the general partners (GPs) (usually the parents in a family) retain control over the management and control of the property, while the vast majority of the economic value and any future appreciation in property value is held by the limited partners (usually the children). The limited partners’

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liability is capped at the amount of their contributions, while the GPs have unlimited liability. To overcome this, a body corporate may be used as GP; however, this comes with the disadvantages of a loss of privacy in relation to the interest held by the GPs and the increased cost and regulatory issues associated with corporate compliance.

A contribution of assets to a LP triggers a charge to CAT and CGT, where relevant. Any disposal by the partnership which results in a realization of latent gains will be subject to CGT, chargeable on the partners in proportion to their partnership interests.

How are expenses of the property discharged? Does use or occupation give rise to tax issues?

General expenses

Occupants of the property should usually discharge general utility expenses. Where an owner who is not in occupation of the property discharges such expenses, the payment may be considered a gift to the occupants, in respect of which the free use of property rules set out below will apply.

Local Property Tax

Local Property Tax (LPT) applies to owners of residential properties in Ireland since its introduction in 2013 (Finance (Local Property Tax) Act 2012). LPT does not apply to tenants in rented property as the registered owner of a property must pay this tax; it is not an occupancy tax.

Free use of property

Where no rent, or a below market rent, is paid, market rent is imposed and CAT is charged on any free use of property. A proportionate allowance may be made in respect of caretaking services rendered by occupants. Part of the benefit of the occupation of a property free of rent may be written off against the annual SGE. A relief from CAT is also available in respect of normal and reasonable expenditure for the support, maintenance or education of minor or incapacitated children or children aged between 18 and 25 years and in full time education or instruction. Loans from parents to fund a purchase by children of the family compound would be outside the scope of this relief and any free use of money arising as a result of interest free loans would be chargeable to CAT.

Benefits in kind—property owned by a body corporate

A charge to income tax arises where certain benefits in kind, including living accommodation, are provided for a director or employee that are not otherwise chargeable to tax (s 118 TCA 1997). The charge is limited to the amount of the expense incurred by the body corporate in providing the benefit.

The benefit in kind charge shall not apply where the accommodation is provided by the body corporate in any part of its business premises, and is used by the director or employee solely in performing the duties of his office or employment. An exemption occurs where living accommodation is provided for an employee, but not a director, on the employer's business premises, if the employee is required to live there so that he can perform his duties properly and it is necessary, in the particular class of trade, for employees of the class in question to live on the premises (s 118(3) TCA 1997). Accommodation provided to employees by a body corporate on a stud farm may be one example of family compound where an exemption form the charge may be available.

Do greater rights or entitlements of family members, or creditors, impede preservation?

Creditors

There is no particular protection in place for creditors in respect of the family compound. The law provides the usual protections to charge holders and mortgagees.

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Protection for non-owning spouses/civil partners

A *family home* is defined in the Family Home Protection Act 1976 (FHPA 1976) as:

> Primarily a dwelling in which a married couple ordinarily reside. The expression comprises, in addition, a dwelling in which a spouse whose protection is in issue ordinarily resides, or if that spouse has left the other spouse, ordinarily resided before so leaving (emphasis added).

A *dwelling* is broadly defined to mean any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with the dwelling, being land that is subsidiary and ancillary to it, is required for amenity or convenience and is not being used or developed primarily for commercial purposes, and includes a structure that is not permanently attached to the ground and a vehicle, or vessel, whether mobile or not, occupied as a separate dwelling.

All transfers of an interest in property in Ireland, whatever the nature, including a conveyance, mortgage, charge or other pledge as security, are subject to FHPA 1976 and it must be declared by the legal owner that a property either is or is not a family home within the meaning of that legislation. Where a family home is owned by one spouse, the prior consent in writing of the 'non-owning spouse/civil partner' is required (s 3(1) FHPA 1976), otherwise the purported transfer of an interest in it may be void, unless certain conditions can be proven by transferee/grantee of the interest.

Civil partnership was available to same-sex couples prior to the introduction of marriage equality legislation in Ireland (Marriage Act 2015). A *shared home*, for the purposes of the legislation governing the relationship between civil partners is defined in s 27 CPCROCA 2010 in the same terms as the above definition of a family home and is subject to the same protection as FHPA 1976 provides for the family home.

Family law—orders in respect of a family home or shared home

In family law proceedings the family/shared home (defined above) is subject to special consideration in the division of assets. The provisions discussed below for spouses on marital breakdown also apply to the regime for civil partners on dissolution of a civil partnership, save for certain minor differences in entitlements in respect of succession rights.

The entire family compound is within the scope of any decision regarding the division of assets on marital breakdown as property adjustment orders can be made in respect of all kinds of property, both moveable and immovable, real and personal, whether the property at issue is the family home or not.

Conveyancing practice is such that all transfers of an interest in residential property or commercial property require a declaration by each natural person on title and their spouse, as to whether the subject property is or is not a family home or subject of family law (matrimonial/civil partnership dissolution/cohabitants redress scheme) proceedings.

Preliminary orders may be made in respect of a family home prior to the full hearing of a judicial separation or divorce case under s 6(c) FLA 1995, and s 11(c) FLDA 1996. Property adjustment orders may be made by a court directing the transfer or settlement on trust of any property, or the variation, extinguishment or reduction of any interest held by a spouse under an existing settlement, at the hearing or at any time after the granting of a decree of judicial separation (s 9 FLA 1995) or divorce (s 14 FLDA 1996), provided that the applicant spouse has not remarried.

The courts are also empowered to provide for the right of one spouse to reside in the family home for any period (s 10 FLA 1995 and s 15 FLDA 1996). The courts are cognizant of the need for proper and secure accommodation to be provided for a wholly or mainly dependent spouse or children of the marriage. No order can be made in respect of a property in which a spouse resides with his or her new spouse.

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The provisions of Article 41.2 of the Constitution provide a recognition for a woman's contribution through her work in the home as a mother to her children, which has been applied to provide credit or equity in the family home to 'non-owning' wives in respect of the family home.

In the unreported case of *C v C* (25 July 2005, High Court, O'Donnell J) involving a family compound, a manor house, and estate including a farm was inherited and solely owned by the husband and used as the family home for two years prior to the marital breakdown. The respondent wife was granted a substantial lump sum order to purchase a new home for herself and the children rather than any share of the family home. It was noted that the husband had a strong claim to the house as the wife had not contributed directly or indirectly to its acquisition and he was the sole owner and had family connections with it for many years.

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