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If we are to come out the other side of the current economic crisis in good, or perhaps even better shape than we were originally, it is vital that we start to focus on the advantages to be had from a downturn, explains John Boland.

From a tax point of view there has rarely been as good a time to transfer wealth to the next generation, due to the fact that the market value of assets are now comparatively low. Consequently, there do exist many opportunities for the tax efficient transfer of wealth to the next generation, including in the property market.

If we take the example of parents who wish to transfer a sum of money to one of their children (ignoring the annual gift exemption of €3,000). Such a child can receive a total of €434,000 in their lifetime from their parents before they are liable to pay any gift tax. Any sum received over and above this will incur gift tax at the new rate of 25 per cent.However, it could be more tax efficient if, instead of gifting their child the cash, the parents purchase a residential property, retain ownership of it for three years whilst the child lived in the house and then subsequently gifted the property to the child. The tax implications of such a course of action would involve a consideration of Capital Gains Tax, Capital Acquisition Tax and Stamp Duty implications.

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Capital Gains Tax

The parents would be exposed to a potential Capital Gains Tax cost of 25 per cent of the difference between the market value of the property when they purchase it and its market value three years later when they transfer it to their child. In addition, the principal private residence relief would not be available as the parents themselves could not live in the house for the three-year period. However, in terms of capital appreciation, three years is not a period in which one would expect a significant uplift in the market value of such an asset, particularly in a downturn. Also costs of acquisition and disposal, such as legal fees, auctioneers fees and stamp duty, would be allowable in terms of reducing this taxable gain in the usual manner. Consequently there might be little or no taxable gain in respect of such a transfer.

"A CHILD CAN RECEIVE A TOTAL OF €434,000 IN THEIR LIFETIME FROM THEIR PARENTS BEFORE THEY ARE LIABLE TO PAY ANY GIFT TAX."

Capital Acquisition Tax

Gift tax would be chargeable on the gift of the house to the child. However an exemption is available in respect of the transfer of certain dwelling houses, together with grounds of up to one acre. The correct utilisation of this exemption would result in the following:

- No gift tax cost;
- Preservation of the child's €434,000 threshold available for offset against future parental gifts (assuming no prior benefits); and
- Any future uplift in value of the property would be attributable to that child.

Broadly speaking the main conditions of this dwelling house exemption are:

- The child must occupy the dwelling house as their only or main residence for the three-year period before the date of the gift;
- Their parents must not have lived in the house with them during this three-year period (subject to some exceptions);
- The child must not be beneficially entitled to any other dwelling house or interest therein at the date of the gift; and
- The child must continue to occupy the dwelling house as their only or main residence throughout the six-year period starting on the date of the gift.

However, if the parents were to die unexpectedly before the three-year period had ceased then the relief would be lost. In order to minimise the likelihood of this relief being lost as a result of a transfer by way of inheritance it might be best to ensure that the parents' wills provide for the transfer of their interest in the property to each other firstly and then to the child, which should maximise the period available to the child to meet the three-year ownership retention requirement.

Free Use of the Property

The occupation of the house by the child for the three-year period would be viewed as an annual gift from the parents to each of the property's occupants of the home's market rent obtainable on a letting to an unrelated third party. To the extent that such a gift is not covered by the annual exemption of €3,000 or the relevant group threshold there could remain a gift tax liability of 25 per cent of the balance.

Stamp Duty

On a transfer by way of gift, stamp duty at the relevant rates on the market value of the property at the date of the gift may also be payable

Market Value	Rate of Stamp Duty
First €125,000	Nil
Next €875,000	7%
Excess over €1,000,000	9%

by the child.

However, this liability should be halved as a result of consanguinity relief which operates on the transfer of certain assets between blood relatives. In addition, depending on the child's circumstances, it might be possible to benefit from first-time buyer relief in respect of such a transfer.

No doubt the above provides some food for thought and will hopefully for some at least represent a silver lining on an otherwise dark and gloomy cloud.

Naturally, as is always advisable, anyone carrying out any transaction or intending to advise someone to carry out any transaction based on the contents of this article should seek appropriate professional advice in relation to their specific circumstances.

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