Being unmarried can cost money if partner dies

There is a misconception that co-habiting couples enjoy the same tax advantages as married couples or Registered Civil Partners, but they don't. This article outlines how not being married can have expensive tax consequences when a life partner dies

The number of couples co-habiting has been on the increase for some time. Of the 1.22 million families in Ireland (CSO 2016), over 152,000 couples were counted as cohabiting in 2016, which is an increase of 6 per cent since 2011.
The number of cohabiting couples with children in rental accommodation increased by 38 per cent to almost 40,000 families.
From the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, a co-habiting couple is defined as "one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other".

SURELY CO-HABITING COUPLES HAVE THE SAME TAX ADVANTAGES AS MARRIED COUPLES, RIGHT?

WRONG. There is a misconception that the Civil Partnership & Certain Rights and Obligations of Cohabitants Act 2010 gave co-habiting couples the same tax advantages as those available to married couples or Registered Civil Partners, but it didn't. The Act did give co-habiting couples the right to claim from a deceased partner's estate but did not allow them to enjoy the same tax advantages that married couples enjoy and therefore any transfers of assets may be subject to Capital Gains Tax and Capital Acquisitions Tax (CAT). **The maximum they can inherit without paying tax which applies to them is Group C, i.e., €16,250.**
In Ireland, married couples and registered civil partners (RCPs) enjoy a number of tax advantages which are not available to single people. They can choose how they are assessed for income tax to produce the best tax advantages for their own personal circumstances. Further to this, a married couple or RCPs can transfer assets between them free from Capital Gains Tax, Capital Acquisitions Tax and Stamp Duty.

HOW DOES YOUR MARITAL STATUS AFFECT YOUR LIFE ASSURANCE?

If you are part of a co-habiting couple and wish to take out Life Assurance, care needs to be taken to ensure that there is no potential liability to CAT. However, this depends on the type of policy you are taking out. Life assurance policies may give rise to a CAT liability, on the basis that the surviving partner is (a) beneficially entitled to the sum insured and (b) the sum insured is in their possession.

CAN A MORTGAGE PROTECTION POLICY BE SUBJECT TO TAX?

Couples will often purchase a property, with a view to living together before getting married later. The lending institution will insist on a mortgage protection policy being put in place and assigned to them, prior to releasing the cheque for the property. When the policy is assigned to the lending institution, the relevant sum insured is payable directly to the lending institution in the event of a claim. The co-habiting couple generally do not receive the sum insured and the mortgage is cleared by the policy.
In this case, the two criteria required for a CAT liability do not arise, i.e., the surviving partner does not have beneficial entitlement to the sum insured nor is it in their possession, so it follows that no CAT arises on the sum insured, provided the full sum insured pays off the mortgage.
If there is any balance over the mortgage amount and the relevant sum insured, this may give rise to a CAT liability when repaid to the surviving partner.
Where the policy has not been assigned to the lender, then a CAT liability will arise as the surviving partner will have beneficial entitlement to the sum insured and it will be in his/her possession.
Once the mortgage has been cleared, consideration should then be given to the other assets that may be passed between the couple. Further to this, does the Dwelling House Exemption apply on the inheritance of the house?

LEVEL TERM ASSURANCE POLICY

The other assets passed between the couple would generate a liability to inheritance tax where the value of those assets exceed €16,250. In the situation of a young couple buying a property together, where the property is owned under Joint Tenancy, half of the property would be inherited by the survivor, should one die. The Dwelling House Exemption may come into play, but if the survivor has lived in the house for three years prior to the inheritance, a CAT liability may arise. This is an area specifically related to young couples living in their first property with plans to get married at some date in

the future. The conditions for the Dwelling House Exemption include a need to have lived in the property for a least three years prior to the inheritance, to avoid a potential inheritance tax liability arising.
The conditions for the Dwelling House Exemption are as follows:

- the dwelling house must be the principal private residence of the disponer (the person who provides the gift or inheritance) at the date of his or her death;
- the dwelling house must have been continuously occupied by the beneficiary as his or her only or main residence for a period of three years immediately preceding the date of the inheritance;
- the beneficiary must not be entitled to an interest in any other dwelling house at the date of the inheritance; and
- the beneficiary must continue to occupy the dwelling house as his or her only or main residence for a period of six years after the date of the inheritance.

A level term insurance policy can cover that potential tax arising on the inheritance of the house, but also on other assets that are passed between the co-habiting couple.
For those couples who are long-term co-habitants, assets passed between them will equally give rise to an inheritance tax liability.
There is a further need for insurance to cover loss of income, like any married couple, especially where there is one 'bread-winner' or main income provider. A death in any relationship can result in income loss and deprivation, and lifestyles can be severely curtailed. So, a solution for this would be for the co-habitants to take life insurance policies on each other's lives.
This is typically referred to as a 'Life of Another.' Each partner in the co-habiting relationship takes out a policy on their partner's life: Partner A takes out a policy with Partner B being life Insured and Partner B takes out a policy on the life of Partner A. The key is that each partner pays the premiums for the policy they own which will mean no inheritance tax arises on the policies.

EXAMPLE

John and Joanne are living together for several years with children but never had the opportunity to get married. Joanne is the main breadwinner, employed by a local company. Her salary is the basis for the main income coming into the family. Joanne also has assets which will pass to John should she die, which includes a death-in-service (DIS) benefit from the company (see Figure 1) .

Joanne's assets could be listed as follows:
€200,000 DIS benefit (assumed salary €50,000)
Small investment of €20,000
Car valued at €22,000
Total Estate value: €242,000

Figure 1.

John works part-time locally earning around €1,000 a month so has his own income to pay for any insurance premium. Based on the estate value in Figure 1, a potential tax of €74,497.50 [(€242,000 - €16,250) x 33 per cent] may arise for inheritance tax alone. This does not consider what loss of income might also be covered.
If John was to be the policy owner of a policy, with Joanne as life insured and John paid the premiums, then, in the event of Joanne's death, the sum insured would be payable to John. No inheritance tax would arise as John is receiving the value of a policy for which he has paid. The sum insured could be used to pay off the inheritance tax liability but also to cover loss of earnings as a result of Joanne's demise.
Other options that might be explored would be a Section 72 policy, set up by Joanne under S72 trust for John, to pay off the inheritance tax liability. However, the loss of income would be another matter for a separate policy.
Let's not forget there is always the opportunity for them to get married, which alleviates all tax pressures as all assets can pass tax-free between spouses.

CONCLUSION

In conclusion, co-habiting couples may need the help of an independent adviser to:

- clearly identify their own needs;
- trace whatever tax liability they may face in the event of either dying; and,
- put a structure in place that will ensure the proceeds of policies are paid out in the most tax efficient manner.

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