

Succession Trusts Tax Young Families

Wills & Probate Conference
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Issues Covered

- Structure of Wills catering for young children
- Discretionary trust taxes
- Tax on trusts for persons with disabilities
- Finance Bill 2014 – CAT changes

Wills For Young Families

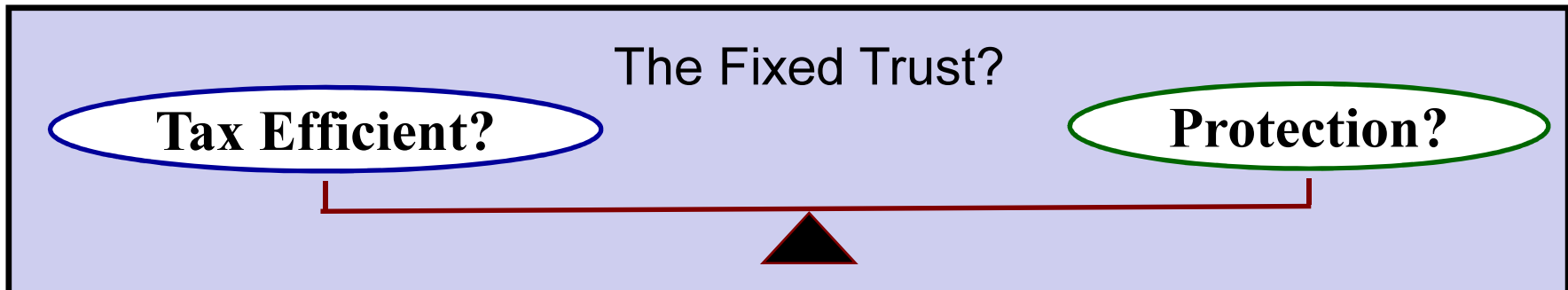
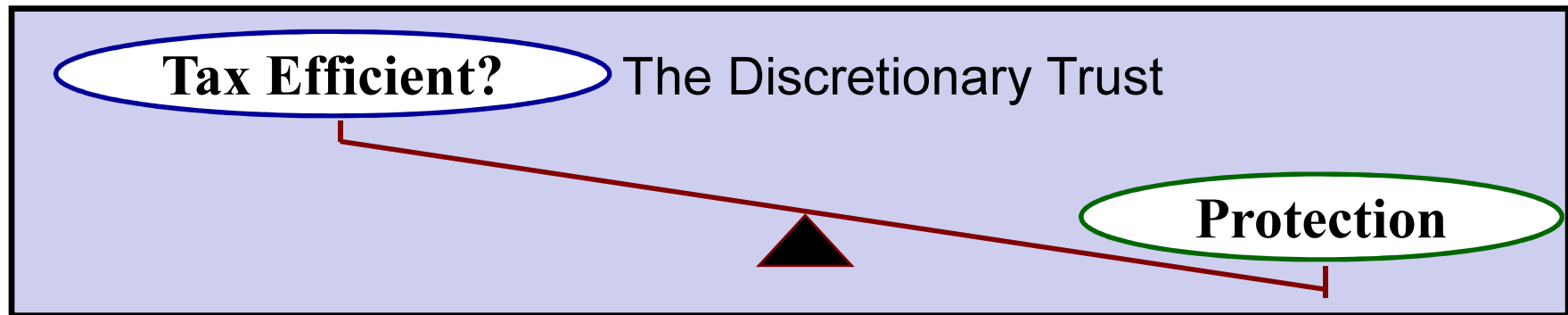
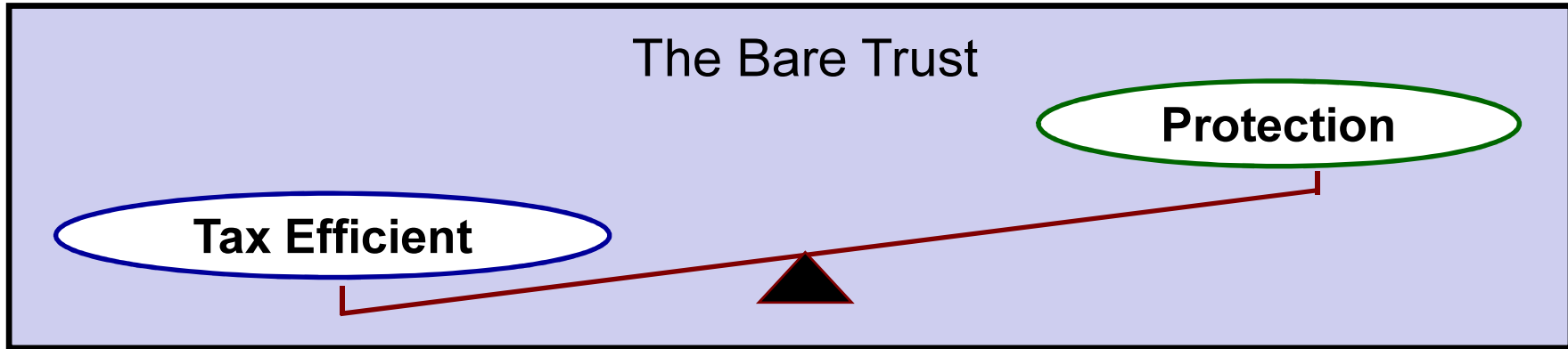
Tax Efficiency

V.

Protection

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Perceptions.....



The Bare Trust

To child absolutely

Legal Effect → Access @ 18

Tax Effect → Tax Immediately

The Discretionary Trust

To trustees to hold for class of children

Legal Effect → Protection – no access until appointment

Tax Effect → Inheritance postponed

The Fixed Trust

To child at age 18/21/25

Income discretionary until age 18/21/25

or

Income paid out up to relevant age

The Fixed Trust

Accumulate

Discretionary Trust
Without Protection

Do Not Accumulate

Bare Trust
Without Tax Advantage

Comparison

- Assume child tax free threshold
- Inheritance of €1m on death
- Inheritance invested at 5% pa
- Suggest 3% increase of threshold
- Ignores income distributions in disc trust (paid exempt for CAT or neutral for IT purposes)

Bare Trust

- Tax paid €256k
- Net year +12 = €1.33m
- Most tax efficient

Discretionary trust to age 21

- Tax paid €487k
- Net year +12 = €1.31m
- Tax efficient & query protects

Discretionary trust to age 25

- Tax paid €542k
- Net year +12 = €1.24m
- Most protective

Fixed Trust re Income to age 18

- Tax paid €442k
- Net year +12 = €1.19m

Fixed re income to age 25

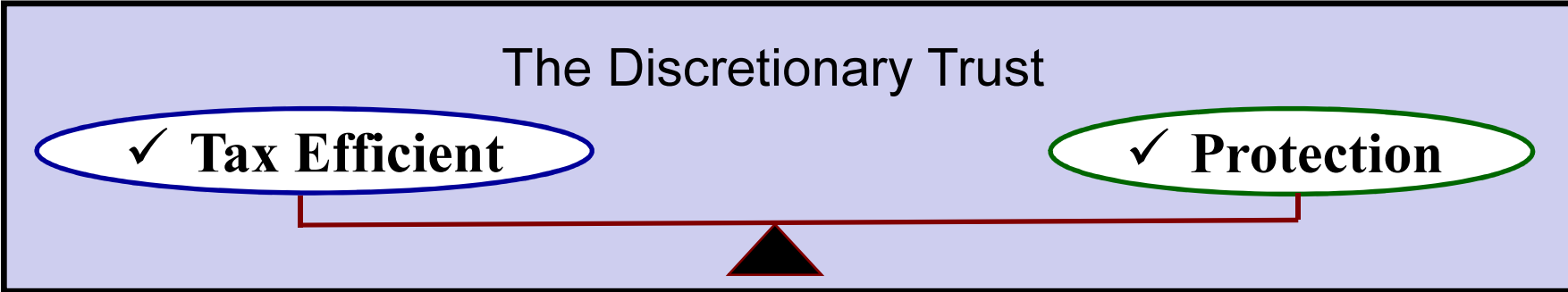
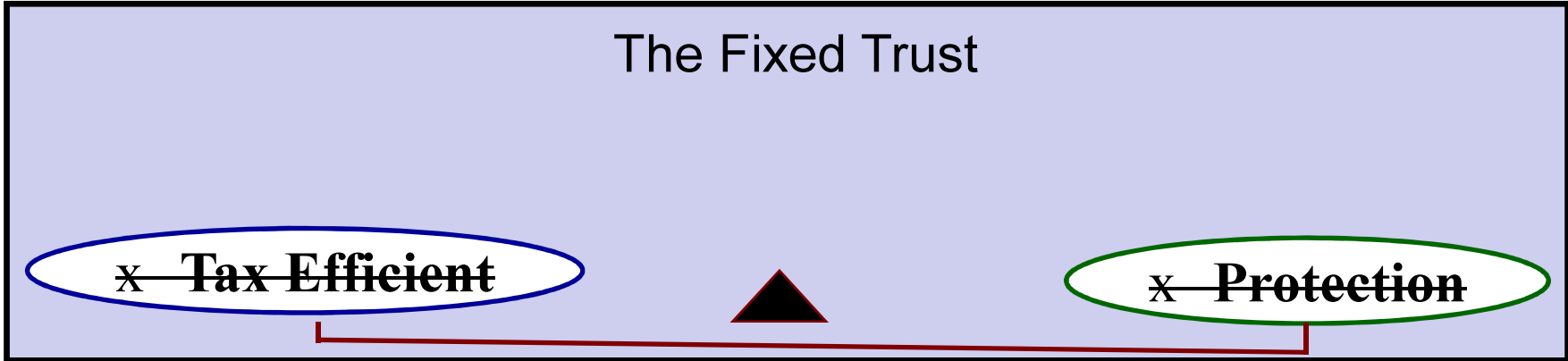
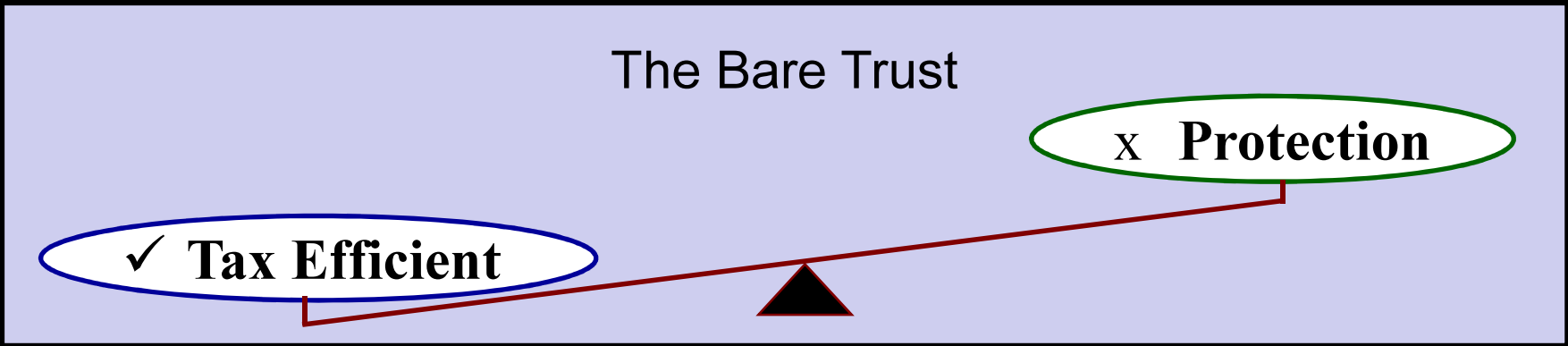
- Tax paid €715k
- Net year +12 = €0.99m



Conclusion for Young Families?

Fixed Trusts are not a solution

...So what works?



Conclusion

- Fully discretionary trust + assess before youngest is age 21 - levies MAY then be avoided
- Bare trust for assets protected with other structures (e.g. partnerships)

Discretionary Trust Taxes to Consider

- Discretionary Trusts and Residuary Estate – Irvine case and FA 2012
- Exemption from levies during lifetime of person with special needs
- Section 84 exemption – case law and Revenue practice

Discretionary Trusts and Residuary Estate

Re Irvine case – High Ct 2005 Laffoy J.

- Held - no assets vested in the trustees until the ascertainment of the residue
- => no deemed inheritance by residuary beneficiaries (the trustees) until residue ascertained (s20 CATCA03)
- => no accumulation of annual levies (1%) while estate administered

Discretionary Trusts and Residuary Estate

- FA 2012 response to case – reverse its effect
- Now chargeable date/‘trigger point’ for initial 6% levy = date of death
- Annual levies arise from that date => accumulation if lengthy administration
- Re all discretionary benefits – not just residuary estates
- Future interest trusts? Revenue eBrief - chargeable date after interest in possession expires

Trusts for Child with Special Needs

- Protection
 - Vulnerability of child – asset protection
 - Means testing criteria
 - Provision for rest of family after
- Tax benefits
 - Section 84 CATCA03 exemption re medical expenses
 - s17(1)(d) CATCA03 exemption discretionary trust levies

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Trusts for Child with Special Needs

Exemption from levies

Structure to ensure no other taxable beneficiary

- Concern Revenue interpretation no other exempt beneficiary
- Separate trusts if other young children under age 21 and % needs not fully apparent
- Finance Bill 2014 – extension charities & anti avoidance

Trusts for Child with Special Needs

Exemption from levies

- Structure to avoid levies on death of child with special needs
- Trust period length
- Provision for rest of family post death of child with needs

Section 84 exemption

- Exemption from CAT for benefits taken exclusively to discharge medical expenses of a permanently incapacitated individual
- Revenue interpretation - the benefit must state the qualifying purpose
- Intestacy n/a
- Letters of wishes?

In Addition...

Finance Bill 2014

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Finance Bill 2014

As initiated....

- Agricultural relief and the ‘farmer test’
- Benefits for children – exemption restricted
- Charities – extended definition & anti avoidance

Agricultural relief

- Farmer test
- Traditional 80% assets test
- Plus long term test...
- Post benefit plus 6 years agricultural land must now be
 - actively farmed or
 - under long lease to active farmer
 - unless dies within 6 years = claw back

Agricultural relief

- Actively farmed
 - > 50% normal working time
 - On a commercial basis to realise profits
 - Leases whole/substantial >6 years to active farmer
 - Not in relation to existing land of beneficiary (but include that time spent)
- BPR an alternative?
 - Asset must be relevant business property
 - RBP = property consisting of a business

Children's Exemptions

- s82(2) CATCA03 - Gifts for the support, maintenance, education of child
 - if part of normal expenditure of parent; and
 - if reasonable having regard to the financial circumstances of the parent
- s82(4) CATCA03 - Benefits for the support, maintenance, education of minor child
 - where both parents have died
 - if would have been part of normal expenditure of parent if alive; and
 - if reasonable having regard to the financial circumstances of the parent prior to death

* Child includes stepchild or child of civil partner

Children's Exemptions

- Both sections amended by FB2014
- Both now also restricted to
 - Minor child
 - 18 years < Child >25 years receiving full time education or instruction at any university, college, school or other educational establishment*

* includes training for a trade/profession requiring full time training >2 years, employer to furnish particulars on request

Post FB 2014

- s82(2) CATCA03 - Gifts for the support, maintenance, education of ~~child~~ **minor child or child under 25 in full time education**
 - if part of normal expenditure of parent; and
 - if reasonable having regard to the financial circumstances of the parent
- s82(4) CATCA03 - Benefits for the support, maintenance, education of minor child **or child under 25 in full time education**
 - where both parents have died
 - if would have been part of normal expenditure of parent if alive; and
 - if reasonable having regard to the financial circumstances of the parent prior to death

* Child includes stepchild or child of civil partner

“I intend to live forever,
or die trying”

Groucho Marx

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