
Estate Planning

Most people view estate planning as being the execution of a Will which determines at death how residual property will be distributed. However estate planning is much more than this. Our estate may be defined as the combined value of our assets and liabilities. Our assets consist of real property and personal property. Our liabilities include those amounts which we owe to others including the ever-present “tax man”.

Estate Planning is more than the execution of a Will.

Concept of Property

When we consider our assets and property we need to understand that there are three aspects associated with them, namely ownership, management and benefit. These three elements are important because they enable us to understand how we may structure our financial affairs to take advantage of the flexibility of separating these elements. For example, an individual may own an asset, delegate the management of it to a second party, and provide for the benefits to flow to a third party.

When business owners grow their businesses and their investments, they grow their estates. As they plan to provide benefits from this growth to their family members they may consider whether or not they also wish to confer management and/or ownership rights. As asset values grow, so do the tax demands of the government. Capital gains tax and probate fees are payable at death, and in the case where the business has appreciated significantly, there can be a large tax liability created even if the business is not sold outside the family.

The Estate Freeze

For this reason it is not uncommon for business owners to recognize a point in value at which they are able to say “This value is sufficient for my lifetime need, and any increase in value from today forward will accrue to the benefit of my family”. In determining how this future value will pass to the family, the owner needs to consider whether the intent is also to pass control and management in addition to the benefit. Clearly this is a lifetime decision, rather than being administered under the Will.

Ownership and control can be transferred to children by giving them shares with voting rights directly. However, these assets will form part of their family assets and will be subject to Family Law in the event of marriage breakdown. These assets will also form part of the estate to be governed by their Will at their death.



INVESTAFLEX
FINANCIAL GROUP

938 Howe Street, Suite 308
Vancouver, BC V6Z 1N9
Web Site: www.investaflex.com

Tel: 604-331-2520 Fax: 604-331-2540
Toll Free Tel: 1-888-469-3539
Email: info@investaflex.com

Family Trusts

In order to provide some protection from these events, the business owner may elect rather to have the future growth of the business owned and controlled by a family trust, for the benefit of his or her family members. By separating benefit and control we create a greater protection from creditors and family claims. The trust may also be used to create a broad discretion for the trustees to distribute the benefits according to needs rather than according to a fixed formula based upon share ownership. If the owner is a trustee, it ensures that control remains certain for his or her lifetime, and the benefits may be directed at their discretion.

Other Transfer Tools

Many advisors recommend to their clients that investments, real estate, and bank accounts should be placed in joint tenancy with family members so that the property may transfer absolutely to that member at death outside of the estate, therefore not governed by the Will. However, in the case of appreciated property this may trigger an immediate tax disposition for at least 50% of the value of the property resulting in the tax payable today rather than in the estate, and it does not circumvent capital gains tax. Other than for spouses for whom the tax roll-over rules apply, this means that is not generally advisable for appreciated property, such as shares of the business.

Wills and Testamentary Trusts

The Will generally instructs the executor to discharge all outstanding liabilities including taxes and then to distribute the residual value based upon fixed amounts or bequests, a distribution formula and specific distributions of personal property. If there is any doubt about the ability of the children to manage the assets, or there are concerns about marital breakdown, or the testator wishes to create tax advantages for their heirs, they may instruct the executor to create testamentary trusts. Similar to the trusts mentioned above, the trustees will manage the assets for the benefit of the beneficiaries. Unlike a trust created during one's lifetime, the testamentary trust enjoys preferred tax treatment being taxed as if it were an individual with progressive marginal tax rates. The trust may distribute the taxed profit as capital, tax-free to the beneficiaries, or it may distribute the untaxed income to beneficiaries at the discretion of the trustees. This creates a valuable opportunity for income splitting and tax reduction.

Use of Life Insurance in Estate Planning

Many business owners are not aware of the significant tax advantages that can be created by integrating properly designed life insurance programs into their estate plans. The death benefits from life insurance policies are tax exempt. A personal policy will distribute this tax free payment directly to the named beneficiaries which may include an insurance trust with the same attributes as a testamentary trust.

In a corporation, that death benefit may be distributed largely tax-free as a capital dividend on any class of share. This may permit either redemption of outstanding shares or distribution of the value, dependent upon which is the most appropriate tax strategy at the time. Since corporations may use after-tax corporate dollars to fund this life insurance, it is an extremely powerful way for business owners' heirs to strip out trapped surplus or corporate profits after their death without having to pay tax on dividends.

06-02



INVESTAFLEX
FINANCIAL GROUP

938 Howe Street, Suite 308
Vancouver, BC V6Z 1N9
Web Site: www.investaflex.com

Tel: 604-331-2520 Fax: 604-331-2540
Toll Free Tel: 1-888-469-3539
Email: info@investaflex.com