Your Guide to Estate Planning

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Your Guide to Estate Planning

Like most people, you have definite goals – both personal and financial. However, without a plan to focus your efforts, you may find it difficult to achieve them.

One area that you should examine closely is your estate. Since estate planning is a wide-ranging subject, you need to concentrate on the various components of a good estate plan and how they apply to your situation and goals. Once you've considered the topics we are going to introduce, you can begin the process of establishing an estate plan that makes sense for you.

Since estate planning is a wide-ranging subject, you need to concentrate on the various components of a good estate plan and how they apply to your situation and goals.

Even if you already have a plan, keep reading—estate planning is a dynamic process. At different stages of your life, your situation and goals will change, and you may decide to amend your strategy. As a result, you should regularly review your plan to ensure it continues to reflect your wishes.

Objectives of Estate Planning

Simply put, the goals of estate planning are to:

- Maximize the value of your assets, for yourself and your heirs
- Minimize and defer tax and other costs arising on your death
- Allow for a smooth and timely transfer of assets to your beneficiaries

You will likely have other intentions. For example, you may want to leave specific assets, like a cottage or business, to certain beneficiaries while treating all of them fairly. Or, you may want to make a sizeable gift to charity upon your death. Due to the wide variety of possible objectives, estate planning has often been described as an art rather than a science, but a few general guidelines apply to most people.

Starting Points to Consider

Some of your goals may be at odds with others. Although minimizing tax is one of your chief objectives, for example, you also have to make sure tax minimization strategies do not conflict with your other wishes. Estate planning is a balancing act—you'll need to evaluate the conflicting issues and choose an arrangement that's optimal for you. Ultimately, an effective estate plan will address as many of your individual goals as possible.

When developing your estate plan, it's important that you do not focus solely on your beneficiaries; you need to think about yourself and the income and assets you'll need to enjoy the lifestyle that you want and have worked for. A good plan will ensure that you have saved adequately for your retirement by contributing to your Registered Retirement Savings Plan (RRSP) or other pension plans, and saving in accounts like a Tax-Free Savings Account (TFSA). You don't want to give away assets and realize later that you really need them for yourself.

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Upon your death, your family should not have to cope with potentially difficult legal and tax matters. A good estate plan will help them deal with your estate at a difficult time. They will have enough to handle when the time comes—so make major decisions prior to death.

If you own a business and intend to turn it over to your children, additional planning will be required. You are not only passing on ownership of the business, but also providing for management succession. Generally speaking, unless you plan ahead for succession, your business will not maintain its value with the change in ownership. In some cases, the business may not even survive, or it may have to be sold.

One final consideration to keep in mind is the importance of discussing your intentions with your family. Too many people assume that the family understands their goals and objectives concerning their assets. Estate planning works best when your family is aware of your wishes and understands the reasons for your decisions.

Following are general descriptions of some key strategies to help you maximize the value of your estate and minimize tax and potential risks to your assets, while also providing for an orderly transfer to your beneficiaries. Be sure to consult a specialist about your personal situation.

MAXIMIZING THE VALUE OF YOUR ESTATE

The first step in estate planning is building net worth during your lifetime.

Pay Off Personal Debts

If you're like most people, you have to borrow to buy an expensive asset such as a house. One of your first goals should be to pay down these debts. From a tax perspective, this is an excellent way to save money.

Let's assume you have a $100,000 mortgage at a 10% interest rate (to simplify matters we'll ignore compounding interest). At the end of each year, you have the option of paying off 15% or $15,000 of the principal. If you make the extra mortgage payment, you will reduce your interest costs in the next year by 10% of $15,000, or $1,500. If instead you invest the $15,000 in a term deposit that earns interest at 10%, you will also earn $1,500 in interest.

What's the difference? If you pay down your mortgage and save $1,500 in interest costs, you'll be $1,500 ahead at the end of the year. However, if you earn interest on a term deposit of $1,500, you will have to pay tax on this income. If your marginal tax rate is 50%, you'll really have only earned $750 in interest after taxes. To put you in the same after-tax position as paying down your mortgage, you would have had to earn interest at a rate of 20%, or $3,000, on your term deposit.

The earlier you start the more money you will have to enjoy when you stop working. In addition, properly funding your retirement will increase the value of your estate to be passed on to your family.

Properly managing personal debts is one of the best ways to build your estate when you are acquiring assets.

Save for your Retirement

It's never too soon to begin saving for your retirement. The earlier you start the more money you will have to enjoy when you stop working. In addition, properly funding your retirement will increase the value of your estate to be passed on to your family.

The Canadian tax system allows you to save for your retirement on a tax-deferred basis, either through a pension plan at work or through your own RRSP. Not only are the contributions to these plans deductible for tax purposes, saving you taxes now, but the income earned on contributions grows tax-deferred until you make withdrawals from your plan—which may not be for many years.

> Money saved in these government-sponsored plans can significantly add to your estate and enhance your retirement lifestyle.

Since 2009, Canadian adults have also been able to contribute up to $5,000 a year to TFSAs. While deposits do not earn a tax deduction, income grows tax-free and withdrawals can be made at any time with no tax impact whatsoever.

Over time, money saved in these government-sponsored plans can significantly add to your estate and enhance your retirement lifestyle.

Consider Disability Insurance

What would happen if you suddenly became permanently disabled due to an accident? Would your family have the resources to take care of you? Would the loss of your income mean undue hardship for your family, or wipe out the estate you intend to pass on?

Many employees have some form of disability insurance through work, usually structured so that any disability payments received would not be taxable. However, if you are a self-employed contractor, or have your own business, you may not have considered the financial consequences of becoming disabled.

Whether you are employed or self-employed, you should determine the level of coverage you would need to provide a sufficient level of income if you were unable to work. Read the fine print carefully, as not all disability policies are the same. For example, does the policy cover situations where you can no longer perform duties in your chosen occupation, or does it simply apply to situations where you are unable to work in any occupation? An insurance specialist can help you evaluate your needs and ensure you have appropriate coverage.

Protect Against the Costs of Long Term Care

Another threat to your estate is the risk of requiring long term care later in life. The cost of care in a facility or special treatment in your home can be substantial and may not be fully covered through your provincial health plan. Long term care insurance can be purchased to help fund these costs and preserve your assets.

Prepare Powers of Attorney

If you were to suddenly become mentally incapacitated, who would you want to manage your financial affairs, and to make important decisions about your housing and health care?

Don't assume family members can act on your behalf on short notice. To ensure your wishes are met, you need to prepare two legal documents known as powers of attorney (POAs): one to name someone to manage your financial assets according the instructions you set out and the other, to oversee your personal care, again according to your wishes. As there are many kinds of financial POAs, it's important that you have one that "continues" to be in effect if you lose mental capacity.

If you don't have valid POAs, provincial laws will determine who will act on your behalf. Although interested parties can generally apply to the courts to be one or both of your attorneys, this process can be time-consuming and expensive.

Having up-to-date POAs for property and personal care is a critical component of any good estate plan.

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Family Law Considerations

Do you have significant assets and are you about to marry or remarry? If so, it is important to understand the family law rules that apply in your province. First, consider that marriage itself invalidates a will signed before the wedding, unless it was made "in contemplation" of marriage to that person. And in many cases, a division of assets will be required in the event of marriage breakdown.

In addition to updating your will, you may want to consider a marriage contract to reduce uncertainty for everyone concerned. A marriage contract allows you and your spouse to agree beforehand on how your assets will be divided if the marriage were to fail. For business owners and individuals with children from a previous marriage, this can be extremely important.

In some provinces, family law can override the rules for property division contained in your will. Consequently, a marriage contract can also help ensure that your estate is divided as you intend on your death. For common law spouses, a contract and a will may be the only ways to ensure your intentions are met in the case of a separation or death. Consult a lawyer to determine what a contract could do to help accomplish your estate objectives.

MINIMIZING TAX ON DEATH

After you have identified opportunities to maximize your estate, the next step is to ensure the tax on it is minimized. Along with taxes on income earned during your final year, there may be additional taxes triggered on your investments.

Upon death, an individual is deemed to have disposed of most assets for tax purposes at their fair market value. For capital property, this means that all accrued capital gains will be taxed. If you own depreciable property such as a rental property, depreciation you claimed in the past will be included in your income, assuming that the current fair market value of the property exceeds its original cost.

The value of RRSPs and Registered Retirement Income Funds (RRIFs) is also generally included in an individual's income on death. For most people, the tax arising on these deemed dispositions will represent the largest tax cost on death. Note that for TFSAs, neither investment capital nor income is taxed at death.

In addition to income tax, other taxes can apply on death including probate fees and U.S. estate tax. Unlike income tax, these taxes are based on the value of your estate and not accrued gains. However, with planning, it is possible to reduce the effect of both taxes on your estate.

Here are key strategies to help reduce or defer taxes on your death.

For most people, the tax arising on these deemed dispositions will represent the largest tax cost on death. Consequently, one of the main goals of estate planning is to minimize these taxes where possible.

Roll Over Assets to Family

Income tax can sometimes be deferred on death by transferring assets to a spouse or other family members in a strategy known as a tax rollover. Properly implemented, a rollover can provide significant opportunity to defer tax, as both past and future gains will be taxed in the hands of the beneficiary instead of your estate. In the case of deferred income plans such as your RRSP, your beneficiary will pay tax on any amounts withdrawn from the plan.

Since tax rollovers are limited, you'll want to take full advantage of those available:

Transfer assets to a spouse – If you leave capital assets directly to your spouse or to a trust for the benefit of your spouse under the terms of your will, you will be deemed to dispose of these assets at their tax cost without immediate tax. In addition, funds held in RRSPs, RRIFs and registered pension plans can be transferred to a plan for your spouse on a rollover basis.

Transfer farm property to a child or grandchild – If you own farm property, tax can be deferred if the property is left to a child, grandchild, or great-grandchild. Many conditions must be met to qualify for this rollover. For example, the land must be in Canada and used in farming by you (the deceased), your spouse, or your children, grandchildren, or great-grandchildren immediately before your death. However, if the conditions are satisfied, you will be deemed to dispose of the property at your tax cost on your death. Your beneficiary will assume the same tax cost. This rollover allows tax on this property to be deferred one or more generations.

> Income tax on farm property can usually be deferred by transferring assets to family members who are younger than you .

Transfer your RRSP to an infirm child – If you have a child or grandchild who is financially dependent on you due to a physical or mental disability, the balance of your RRSP or RRIF may be transferable to an RRSP or life annuity for the child upon your death.

Give to Charity

A gift to charity included in your will (referred to as a charitable bequest) can reduce income tax arising on your death. Before dealing with the tax rules that apply specifically to charitable bequests, it is important to understand the basics.

Charitable donations made by individuals are eligible for a non-refundable federal tax credit. The first $200 of donations is eligible for a 17% non-refundable credit while any amount over $200 is eligible for a 29% credit. Provinces and territories also offer tax relief, either as separate credits, or due to the fact that provincial/territorial tax is based on federal tax. As a result, the actual tax savings from charitable gifts will vary by province or territory.

There are rules that limit the amount of donations you can claim during the year.Your donation claim will generally be limited to 75% of your net income for the year in which you make the gift. If you gifted capital property such as shares, you may be able to claim an additional credit amount, which will ensure that any tax from a taxable capital gain and recapture of depreciation that arose from that gift can be offset by a donation credit. If you make a large donation in a particular year and are unable to claim the full amount, the unclaimed portion can be carried forward and claimed in the following five taxation years.

Due to the limitations on donation claims and the fact that donors must ensure that they provide for themselves and their family, many choose to wait and make large gifts under the terms of their will as a charitable bequest. To assist people making these gifts, the government has provided the following special rules for bequests and other gifts made in the year of death:

One-year carry back – Donations made in the year of death can be carried back and claimed in the prior year. This rule is especially useful where income in the year of death is low.

Income limitations waived – In the year of death and the previous year, the 75% net income limitation will not apply.Your donation claim can be up to 100% of your net income, which will be more than enough to eliminate your income tax.

Charitable bequest carry back – If you provide for charitable bequests in your will, the actual gift will be made sometime after your death. However, if certain conditions are met, your executors can claim this gift in the year of death on your final tax return. Using the general one-year carry back rule above, the bequest can also be claimed in the year prior to death.

Prearrange your Funeral

Although not a pleasant topic, arranging for your funeral before you die will relieve your family of having to deal with these details at a difficult time. You will also be able to obtain a modest tax saving. You can provide a funeral home up to $15,000 for funeral services or $20,000 for cemetery services on deposit towards the cost of the funeral, and the investment income earned on these funds will not be taxable to you. Where the funeral home is providing funeral and cemetery services, the limit is $35,000 in total. In fact, if the investment income is eventually used for cemetery or funeral services, it will never be taxed.

Note that if the funds are returned to you, or if your estate receives a refund from the funeral home because the amount on deposit exceeded the funeral costs, these amounts will be taxed to the extent that investment income was earned.

Consider Probate Fees

Probate fees must be paid to a province when a court confirms the validity of a will. If you need a probated will to transfer ownership of one asset referred to in the will, the value of all assets referred to will be subject to probate fees. Except in Ontario and British Columbia, these fees are usually relatively minor. However, both B.C. and Ontario charge a fee based on the value of the assets with no upper limit. In Ontario, the top rate is 1.5% while in B.C. the top rate is 1.4%.

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There are several techniques to reduce probate fees. If you name a direct beneficiary for your RRSP, RRIF or insurance policy, the proceeds payable on death will go directly to that person rather than passing through your estate and therefore avoid probate. Probate can also be avoided on assets that are held jointly with rights of survivorship with other persons such as your spouse or children. Again, ownership of the property passes directly to them when you die.

More sophisticated planning techniques are also available. For example, Ontario residents could complete two wills—one covering assets that require probate and one covering assets that do not.

> You can transfer the assets you wish to freeze to a trust whose beneficiaries would be your intended heirs. This will allow future growth to accrue to them without giving them control over your assets.

Rollovers are now allowed to certain trusts. Where assets are held in these trusts at the time of death, the assets do not form part of your estate, and are therefore not subject to probate fees. It should be noted that these trusts will have a deemed disposition for income tax purposes on your death, so they should not be used for an estate freeze.

Keep in mind that probate fee planning is only one aspect of an estate plan. You may have other goals that will mean incurring more probate fees than you would like. For example, using probate fee reduction techniques to exclude assets from your estate will usually reduce the amount of assets available for testamentary trusts.The tax planning value of the testamentary trusts can greatly exceed the probate fees saved.

Claim Capital Gains Exemptions

Although the $100,000 capital gains exemption was eliminated in 1994, the $500,000 exemption for shares of qualifying small business corporations and qualifying farm property is still available. Note that the $500,000 exemption is reduced by amounts previously claimed under the general $100,000 exemption. If you own this type of property, there are two basic ways of using the exemption. First, your executors can simply claim your remaining exemption against capital gains that arise on your death. However, there may be problems with this plan:

- The property may not qualify at the time of your death.
- There is no guarantee that the exemption will always be available.

As a result, you should consider the second option for using your exemption—a crystallization of some or all of your capital gains. Crystallization involves triggering a disposition of one or more qualifying assets with accrued capital gains for tax purposes. Any capital gain reported in your tax return will be offset by a capital gains exemption claim, meaning that you will generally not have any tax to pay.The benefit of the exemption will be realized in the future when you dispose of the asset, as it will now have an increased cost base for tax purposes.This will reduce the capital gain you have to report on the actual disposition.

Use an Estate Freeze

Where a tax rollover isn't available, you can still take advantage of a common tax planning technique known as an "estate freeze" to ensure future gains will be taxed in the hands of your heirs. An estate freeze is a process where you guarantee that the future growth of your estate accumulates in the hands of your beneficiaries. By freezing the value of your estate, you will effectively lock in the tax that will arise on your death (subject to changes in tax rates in the future). An effective estate freeze will allow you to pre-determine the taxes that will arise on your death so that you can ensure that cash will be available to pay that tax (for example, by taking out sufficient life insurance).

There are many ways to implement an estate freeze. One is to transfer the assets you wish to freeze, such as shares of your business, to a corporation. By taking back fixed value shares, the transfer of assets can be accomplished on a tax-deferred basis using special rollover provisions in the tax rules.Your beneficiaries can then subscribe for the common or growth shares of the company. At the time of the estate freeze, the value of these common shares would be nominal, but the growth in value of assets in the company would be attributed to the common shares. You could continue to control the assets in the company by ensuring that your fixed value shares will always be able to outvote the common shareholders.

You can also freeze your estate by using a family trust. Under this strategy, you can transfer the assets you wish to freeze to a trust whose beneficiaries would be your intended heirs.This will allow future growth to accrue to them without giving them control over your assets.

The major difference between using a family trust and a corporation for an estate freeze is that it will not be possible to transfer property to the trust on a tax-deferred basis.You will have to pay tax on any accrued gains on the assets at the time of the transfer. However, if accrued gains are small, a trust may be advantageous, as assets held in the trust will not be subject to the deemed disposition rules that apply on death. It should be noted, however, that assets held in family trusts are subject to a deemed disposition every 21 years.

If your children have children, they may also want to perform an estate freeze with property received from your estate.If a freeze is performed shortly after your death, your beneficiaries can ensure that gains accruing in the future will be taxed in the hands of your grandchildren.

A word of caution: before undertaking an estate freeze, you should carefully consider whether you would have enough assets to live on without the future growth of the frozen assets. It may not be possible to reclaim your assets after a freeze.

U.S. Estate Taxes

If you own U.S. property, you should be aware that the U.S. imposes a tax on estates.When U.S. residents and citizens die, they are subject to an estate tax based on the value of their worldwide estate. However, even if you're not a U.S. citizen or resident, you may still be subject to U.S. estate taxes, based on the value of your U.S.-situs property.

U.S.-situs property includes real estate (e.g., Florida condominiums), personal property located in the U.S. (such as boats and furniture), and U.S. stocks and bonds (even when held through a Canadian brokerage account).

If the value of your worldwide estate exceeds a certain amount, and you own U.S. property, your estate may be subject to U.S. estate tax – even if the value of your U.S. property is low relative to the value of your entire estate.

As the tax rules are subject to change, it's wise to speak with a specialist about potential planning opportunities to reduce your exposure to U.S. estate taxes.

TRANSFERRING YOUR ESTATE

Once you have taken steps to maximize the value of your estate and reduce the taxes payable on it, you want to ensure that your estate is passed on to your heirs in accordance with your wishes, and with minimum delay and difficulty for your heirs.

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Although a number of issues will need to be reviewed and dealt with, two major problems can come up:

- If your instructions are not clear and legally effective, your assets may not pass to your intended heirs. The best way to ensure that these uncertainties don't arise is to have a properly drafted will.
- Even with timely planning to reduce and defer income taxes and other costs, there will be costs that your executors will have to pay after your death. Unless there is enough cash available, your executors may have to sell some or all of your estate assets to pay these costs. For many people, life insurance is the best solution to ensure there is enough cash available after death.

Once you have taken steps to maximize the value of your estate and reduce the taxes payable on it, you want to ensure that your estate is passed on to your heirs in accordance with your wishes.

Ensure you have a Properly Drafted Will

You can transfer your assets to your heirs in several ways. For those interested in reducing probate fees, assets can be transferred during your lifetime by way of a gift or a transfer to certain trusts. Another option is to transfer title to assets to joint ownership. However, each of these transfers can involve giving up control over an asset, either in whole or in part, and can trigger an immediate disposition of the asset for income tax purposes. Because of this aspect, most people transfer assets to their heirs by a will.This allows you full control and the use of your estate assets during your lifetime.

A will is a legal document that contains instructions to carry out your wishes on your death. It determines who will receive your assets, how and when the amounts will be paid, and any other instructions important for an orderly distribution of your estate. If you have minor children, your will is the best place to clearly set out your wishes as to who should be their guardian.

Life insurance is an important part of many estate plans, and can be used for a number of functions. You may use existing insurance for different purposes as you proceed through different stages of your life.

Every adult should have a will. If you die without a valid will, you will have died "intestate." This means that the court must appoint someone to administer your assets. If you do not have any next-of-kin, the courts may turn your estate over to provincial authorities. Even where you do have next-of-kin, it is unlikely that provincial estate division rules will match your wishes exactly.

A key decision to make when drafting your will is the choice of an executor to carry out your wishes. Although many people feel obliged to appoint a family member, you need to ask yourself if that person will have the ability to carry out the duties required. In many cases, acting as an executor can be a large undertaking, and the responsibilities will arise at a difficult time.

Finally, it is important to consult your lawyer when drafting a will. A lawyer will help you ensure that your will is valid and will carry out your wishes. He or she will also make sure that it is consistent with the Family Law Act in your province to avoid any challenges after your death.

Consider the Versatility of Life Insurance

Life insurance is an important part of many estate plans, and can be used for a number of functions as you proceed through various stages of your life.

Protection for your family – Generally, individuals first buy insurance to protect family members. For example, you may want to ensure that you have sufficient life insurance to pay the mortgage on your home so that your family will not have to give up their home if you die.

Building an estate – Once children are older, many individuals continue to hold insurance as a means of building their estate. On your death, the proceeds of the policy can benefit a specific beneficiary or be made payable to your estate, to be distributed according to the instructions in your will. In effect, a life insurance policy can be used to create an "instant estate."

Funding tax liabilities arising on death – Later in life, funding tax liabilities on death may become a significant task, especially if you own a business. If your executors do not have sufficient funds to pay these taxes, they may be forced to sell your business to pay the taxes. Life insurance is valuable in these situations, as it provides a source of funds to pay this tax cost, and the proceeds from the policy are generally received tax free. If you've performed an estate freeze during your lifetime, you will be in a good position to estimate the taxes that will be triggered on death and how much insurance you'll need.

Funding buy-sell agreements – If you carry on business with others outside your family, you may be required to buy the interest of your associates on their death, or your executors may be required to sell your interest when you die. Again, life insurance is a valuable tool that can be used to fund these buy-sell agreements. Insurance will ensure that the business has enough funds to buy out the estate of you or your partners with minimal disruption to the business.

You should regularly evaluate your insurance needs to ensure that you have in place the insurance policies that are appropriate for you.

Create a Testamentary Trust

A testamentary trust is a trust that is created on the death of an individual, under the terms of the deceased's will. It's taxed much in the same way as an inter-vivos trust, with two major and beneficial exceptions.

First, where income is taxed in an intervivos trust, tax is generally payable at the top federal and provincial personal tax rates. However, a testamentary trust pays tax using the marginal rates available to individuals. If members of your family will be in the top personal tax bracket, a testamentary trust can provide significant savings, as some or all of the income will be taxed at lower rates, year after year. In addition, the savings can be multiplied if you set up an individual testamentary trust for each of your children.

As an example, let's say you set up a testamentary trust for a child who is in the top tax bracket and the trust earns income of $60,000 per year that would otherwise be taxable to the child. Depending on which province your child lives in, the tax savings will be between approximately $6,400 and $8,500 a year, when you compare the tax payable by the trust with the tax your child would pay personally on that income.

Testamentary trusts can also offer a timing advantage. Unlike other trusts and individuals, a testamentary trust can have a non-calendar taxation year.This can be beneficial where income of the trust is allocated to a beneficiary. When the income is paid or payable to a beneficiary, the income is taxable to the beneficiary in the calendar year in which the trust's taxation year ends.

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For example, let's assume that a testamentary trust has a January 31st year end. If a dividend is received by the trust in February 2010, that dividend will be included in the trust's tax return for the taxation year ending January 31, 2011. If the trust allocates the dividend to a beneficiary, that income will be taxed in the individual's tax return for 2011, and tax on that income won't be due until April 30, 2012—more than two years after the income was received.

Maximize Tax Deductions and Credits

When tax returns are prepared for deceased taxpayers, a number of strategies can be used to lower taxes payable by the estate. These include:

Elections to include income on a separate return – In addition to the last regular tax return for a deceased individual, there are additional elective returns that can be filed.The most common of these elective returns are a return for rights and things receivable, and a trust return to report income while a deceased individual's estate is under administration.

A right or thing is an income item that is due to a taxpayer, but is not received until after death. A common example is an unpaid dividend that was declared before a shareholder's death. In addition, even if you do not provide for an ongoing trust under your will, it may be possible to file a trust return to report income earned by your estate as a testamentary trust. Elective returns provide an advantage, as tax is calculated on each return using a separate set of marginal rates, and in the case of elective personal returns, additional tax credits are allowed.

Ensure that an exemption is claimed for death benefits received – When a benefit arises due to the death of an employee, the first $10,000 of the benefit is not subject to tax.

Wind Up your Holding Company

If you own shares of a company, and the assets of the company are composed primarily of marketable securities and cash, the potential for double taxation should be addressed in your estate plan.The problem is related to the fact that there are two ways of realizing the value of a corporation from a tax point of view. First, if you sell the corporation (or are deemed to dispose of it on death), the accrued gain is taxed as a capital gain. However, if you decide to liquidate the company's assets and wind up the company, the net gain is generally taxed as a dividend.

If you hold shares in a holding company at death, capital gains tax may be triggered on the shares, and your heirs will take over the company with a higher tax cost. However, if your children decide that they want to realize the value of the holding company in cash, it is unlikely that they will find a buyer for the company's shares, and they may wind it up. Double tax can arise since your children will realize a dividend on wind-up. Although they will get credit for the high cost of the shares as a capital loss, this loss can only be used to reduce capital gains. Even though capital losses can be carried forward indefinitely, if your children don't earn capital gains in the future, they may not benefit from this loss.

There is a solution to this problem. However, communication with your family is important. If your children intend to wind up the company, you should ensure that the holding company is wound up while the shares are still held by your executor (during the first year of the estate).Where a deceased individual's estate realizes a capital loss in the first taxation year following death, that capital loss can be carried back to offset capital gains arising on the deceased's final tax return.To ensure that this liquidation is done on time, it is advisable to put instructions in your will to ensure that the wind-up is done on a timely basis.

Summary

Estate planning is important, no matter what stage of life you are at. We have touched on only some of the issues and strategies most people should consider when creating an estate plan. Remember that as you grow older, your needs and goals will change, and your plan will also have to be modified. We invite you to make an appointment with us today to review or help create your plan and ensure it is well structured to achieve your goals.

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