

Estate planning

Many of us want to be able to pass our wealth on to future generations and make sure that the people who depend on us are looked after. Effective estate planning is about developing objectives for your estate that are in accordance with your wishes, building financial security for your dependants, and ensuring that the wealth you have accumulated over your lifetime is not eroded by tax.

Tax issues

The tax that potentially has the greatest impact on the value of your estate and how it should be distributed is Capital Gains Tax (CGT).

In simple terms, CGT is payable when you dispose of an asset (which is held for the purpose of long term capital appreciation) and the value has increased relative to its original acquisition cost.

For CGT purposes, death does not necessarily trigger a CGT liability. However, when your estate is distributed, the liability to pay CGT may be transferred to your estate or beneficiaries. CGT can therefore affect the amount that you leave to your beneficiaries.

There are a number of strategies that can be used to manage the CGT liability. CGT is a complex area. Your estate planning objectives should be discussed with your financial consultant and tax adviser.

What is a Will?

A Will is a legal document that allows you to choose who should benefit from your estate and the person most suitable to administer it, according to your wishes.

A professionally prepared Will, drawn up by a lawyer, ensures your exact wishes are expressed in terms that are clear, concise and unambiguous. It is important to have your Will professionally prepared as a minor mistake in its preparation can seriously affect the benefits that you intended to provide to your beneficiaries.

Most assets that you own can be included as bequests in your Will. There are however a number of exceptions, such as assets that are held as joint tenants or any life insurance policy or superannuation benefits where you have nominated a beneficiary. Similarly, your Will does not extend to any interest you hold in trust property, either as owner or beneficiary.

The terms that you outline in your Will can be expected to apply, unless it is deemed through the legal system that you have not made sufficient arrangements for closely related people, such as an ex-spouse or de-facto spouse.

If you already have a Will you may wish to have it reviewed by your solicitor to ensure it is still valid and in keeping with your wishes.

Testamentary trusts

A Will may make provisions for the establishment of one or more trusts for the benefit of your spouse, children or grandchildren. These trusts can be useful in producing tax effective income for minors. Income distributions from testamentary trusts to children under age 18 are treated as ordinary income; they are not subject to the higher tax rate for certain types of income in relation to minors.

Testamentary trusts are an extremely complex area of estate planning which you should discuss with your financial consultant and your solicitor.

Intestacy

If you do not have a valid Will when you die, you are said to have died intestate. Distribution of your estate will then be carried out by a court-appointed administrator in accordance with current legislation. If the administrator cannot establish who your relatives are, your estate will pass to the State.

By not leaving a valid Will, you are effectively losing control over the distribution of your estate. This means that your estate may not be distributed according to your wishes and assets may be unsuitably distributed to your beneficiaries, which could create a potential CGT liability.

If you do not have a Will or believe that your Will does not reflect your current wishes you should contact your solicitor. If you do not have one, your financial planner can arrange an introduction to a solicitor who can assist in Will preparation.

Power of Attorney

When you establish a financial plan you may also wish to grant a Power of Attorney. Granting Power of Attorney means that you legally appoint a person or organisation to make decisions, sign documents and generally act on your behalf in various matters.

When you grant a Power of Attorney you can choose to either limit the actions which the attorney can perform on your behalf (limited Power of Attorney) or give the attorney wide powers to undertake actions on your behalf (general Power of Attorney).

Both of these Powers of Attorney are automatically revoked if the person granting them becomes mentally incapable of handling their own affairs. An enduring Power of Attorney, on the other hand, will continue to operate if you become mentally incapable.

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