TODAY'S ISSUES

***TODAY'S ISSUES* is produced three times a year by Personal Wealth Strategies. It is a commentary on important taxation, business and economic matters of interest to clients and business associates of Personal Wealth Strategies.** *ed.10/06*

SOME WILL PLANNING THOUGHTS

When the subject of wills comes up, most people say they just have a simple will – *everything to my spouse on my death but should she predecease me, my assets will be divided amongst my children.* That would seem to be the extent of will planning in many cases. But there are a number of financial and tax issues that should be dealt with even in the most straightforward situations. Here are some important clauses to consider for your will:

- Indicate that the trustees are allowed to make all elections allowed by the Income Tax Act.
- Indicate that the assets passing to beneficiaries and income therefrom will not be part of net family property under the Ontario Family Law Act so children will be protected in the event of a marriage breakdown.
- Where there is a surviving spouse, consider leaving certain assets in a non-qualifying spousal trust to reduce his/her income taxes because testamentary trusts are taxed at graduated rates and capital can be transferred to children on a tax free basis.
- Designate beneficiaries of all RRSP's and RRIF's in your will and make sure they are consistent with designations in the policies as well.
- Include a clause in your will referring to a personal memorandum designating personal assets to various family members. This will permit changes from time to time without the need for a new will.
- Provide for alternate executors in case one of the primary executors is unwilling or unable to act.
- Where estate administration will be complicated, allow executors to use the services of a corporate trustee and outside professional advisors for estate administration.
- Do a new will if you have been divorced. The old one is not valid.
- Utilize multiple trusts in your will to spread income among your beneficiaries so the low tax rate is available several times.

As mentioned in the first point above, the Income Tax Act allows many elections that can reduce income taxes. Some of the important ones that may apply are as follows:

- Executor's can elect to offset capital losses in the estate after death against capital gains shown on the decedent's final return.
- Executor's can deem property passing to a spouse or spousal trust be deemed to be transferred at fair market value which in certain cases will result in no additional taxes payable and increase the cost of inherited assets to beneficiaries.

- Executor’s can designate RRSP proceeds to have been received by the spouse for tax purposes rather than the estate which will permit a tax free spousal roll over treatment.
- Executor’s can designate trust income arising from a taxable gain on the sale of shares of a private corporation to be a gain of a beneficiary and therefore eligible for the $500,000 capital gains deduction.

For individuals having more substantial estates, additional will clauses should be considered. For example, instead of leaving assets outright to beneficiaries it is often better to leave them to a discretionary trust for each beneficiary which creates separate trust taxpayers and multiple access to low personal tax rates on income earned by each trust.

There is often a tax advantage to splitting assets between spousal and non spousal trust in a will at the discretion of the executors. A Revenue Canada Interpretation Bulletin indicates that they will accept such an allocation by the executors where the will allows this. This can be an extremely important provision in larger multiple asset estates. The tax treatment of spousal and non spousal trusts is quite different and there are advantages and disadvantages to both depending upon the tax characteristics of the assets at the time. Hence, the reason for giving allocation authority to executors.

Your family lawyer can help you prepare a will that contains appropriate clauses to make sure your wishes are carried out. However, it is also important to have your will reviewed by a financial advisor knowledgeable in tax and financial planning so that tax saving opportunities are utilized on and after death. *This Today’s Issues was written as an article for the MoneySaver magazine.*

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