IN FACT AND IN LAW

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An Estate Plan for the Business Owner-Manager: Why and How

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If you are a business owner-leader whose years of hard labour earned him substantial wealth, you certainly wish to maximize the value of the assets that will be transferred to your heirs. You also want such transfer to proceed harmoniously and at the lowest tax cost possible. To achieve these goals, you must start to plan now.

To establish an estate plan

The purpose of estate planning is to provide for the orderly transfer of assets from one generation to the next while minimizing the taxes associated with the transfer for both the deceased and his estate. In addition to these goals, estate planning must usually satisfy a special requirement when the person whose estate is being planned owns and heads a family business, and that is the **continuation of the business**. In such a case, it is appropriate to establish an estate plan such that the interests of the business owner-manager designated successors as well as those of the business itself are protected.

For the estate plan to attain these goals, it is necessary to consider not only the needs and wishes of the owner-manager, but also the talents, wishes and needs of his designated successors, as well as the reality of his business. It is therefore crucial that the business owner-manager and his advisors carry out a complete review of the circumstances surrounding both the family and the business. It is particularly important to indentify who, among his designated successors, may be actively involved in the business after his death and to provide for compensation for those who will not.

Sensible strategies

When developing the various strategies, the advisors must consider, in particular, taxes at the time of death, the possibility of postponing payment of such taxes, the appropriateness of carrying out an estate freeze, the available tax elections, the cash assets available to the estate to pay such taxes and, in this respect, the advisability of purchasing life insurance. A reorganization of the corporate structure may be contemplated in order to maximize certain tax attributes of the owner-manager while he is alive, as well as those of his designated successors. For example, the creation of a trust may prove to be an excellent mean of maximizing the capital gains deductions of the designated beneficiaries. In addition to the tax benefits, a trust paired with a will may provide a more flexible process for designating those who will take over.

How to proceed

In concrete terms, the estate planning process commences with a preliminary meeting at which time the owner-manager expresses his needs and wishes and provides his professional advisors with his personal balance sheet. This information is used to draw up a detailed tax, financial, corporate, family and personal profile of the entrepreneur, following which various draft estate plans are presented and discussed in order to determine which is the most suitable. All the aspects of the chosen estate plan will then be reviewed and fine tuned to ensure that it will achieve the intended objectives.

The estate plan will be finalized by preparing several legal documents, including a will, which is the cornerstone of the plan and usually:

- a power of attorney to be used in the event of the owner-manager's incapacity
- one or more trust deeds
- a shareholders' agreement

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You may contact any of the following members of the Patrimony Protection and Transfer Group with regard to this bulletin.

To avoid unfortunate consequences

Any inconsistency between these documents may result in unfortunate and serious consequences, such as double taxation, the loss of post-mortem planning opportunities, and maybe even failure to fully achieve the deceased's objectives.

It is therefore important that the owner-manager of a family business be well advised in order to craft the estate plan that will best suit his situation and ensure the successful transfer of his business and other assets. Since no one knows when the inevitable will occur and developing an estate plan is a long process, it is advisable to think ahead and make it a reality now.

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