Why Prepare an Estate Plan?

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Why Prepare an Estate Plan?

- An estate plan can reduce the overall tax burden to an estate, ensure that assets transfer to intended beneficiaries, and limit the possibility of estate litigation.

- While tax is a significant factor in an estate plan there are many other considerations.

Income Tax

- On death an individual is treated as if they sold all assets at fair market value (other than those transferred to their spouse).
- This will include any shares the individual owns in a private corporation including any "freeze" shares.
- This can result in capital gains or in the case of an RRSP/RRIF, inclusion in income of the value of the plan.
- Generally creates tax owing on final "Date of Death" return – due the later of April 30th or six months after the date of death.
- Estates that are more complicated may also have to file one or more estate tax returns.

Cash Flow Planning

- It is important to complete a net worth statement and estimate the taxes that will be owing on death.
- Where will the cash come from to pay the tax?
- Need to consider when tax is due and where the assets are held.
- Assets held joint with rights of survivorship will go directly to the survivor however, tax that is owing on any gains on these assets will be payable by the estate.
- Registered accounts (e.g. RRSP) will be paid to the designated beneficiaries but the tax, if any, would be owed by the estate.

Probate Taxes

- Probate taxes in BC (approximately 1.4% on the fair market value of the estate's assets) are due when the *Will* is probated.
- It can take a significant amount of time for a *Will* to be probated.
- An individual needs to ensure that the executor/beneficiaries will have access to funds in the interim.
- There are common ways to avoid probate taxes such as holding assets as joint tenants.
- Joint tenancy can create other issues such as a deemed disposition at fair market value at the time of the joint tenancy.

Assets and Beneficiaries Outside of Canada – What do you Need to Know

Real Property

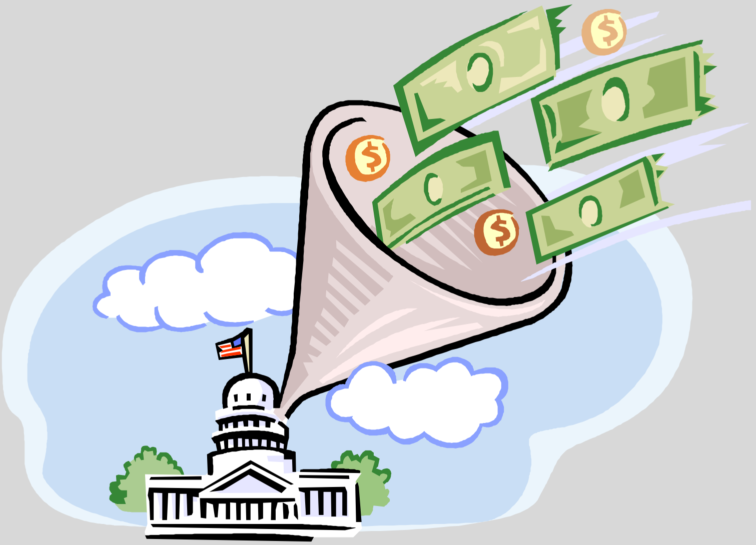
- Can an individual's Canadian *Will* be probated in the other country or do they need a separate *Will*?

- In the US each state, and often county, can be different e.g. Hawaii - may consider a transfer on death deed.

- Generally simplest to hold foreign property jointly but do **NOT** set up a US Living Trust.

- Like Canada, the US has special rules and forms that need to be filed by a non-resident on the transfer of property by a non-resident.

When is US Estate Tax an Issue?



Subject to US estate tax on death if an individual owns US property

- $60,000 USD exemption on US property for non-US residents
- Canada - US Treaty eliminates if an individuals net worth <$11,580,000 USD in 2020
- Need to file a return to claim the exemption if an individual has more than $60,000 USD

What is US Property for Estate Tax Purposes

- US real property and tangible personal property in the US
- US registered accounts (e.g. a US IRA or 401(K))
- Shares in US corporations - including US public corporations and shares held in a RRSP or a TFSA

Canada US Tax Treaty

No US estate tax if :

- An individual has a small estate worth less than $1,200,000 USD
- Transfer is to a spouse
- Worldwide assets are less than $11,580,000 USD (maybe less if a change in US government on November 3rd ??)
- May consider putting US investments in an investment company

US/Foreign Beneficiaries

- Ensure that you know if there are foreign beneficiaries when preparing an estate plan as it can affect a family trust or the use of many planning techniques.
- The estate may have significant additional reporting requirements in Canada to transfer the assets from the estate to the non-resident beneficiary.
- Careful consideration should be undertaken if an individual is transferring either real property or private company shares to a non-resident.
- Transfer of US property can trigger US gift tax and there is no gift tax exemption for Canadian residents.

Potential Problems

If an individual owns shares in a private corporation on death, there is the potential for double taxation.

Potential Double Taxation on Death

- On the death of an individual there will generally be a deemed disposition of the private corporation shares at fair market value - this results in the estate/beneficiaries having a higher cost base in the shares.

- If the estate/beneficiaries can sell the shares, there is no double tax.

- If instead the estate/beneficiaries remove the corporate assets as dividends (as would generally be the case with an investment company) they are taxed again on the dividends - hence the double tax.

Planning Techniques to Avoid Double Taxation

- If an individual has frozen a private company, we often do a "wasting freeze" before death.
- As an individual need's funds from the company during their lifetime, the company buys the shares back reducing the value.
- In a perfect world all the shares would be bought back before death.
- If an individual still hold shares on death, there are two main planning techniques being "capital loss or 164(6)" and "pipeline" planning.

Planning Techniques to Avoid Double Taxation

- In order to do 164(6) planning it must be done in the first estate return after death – there are various other criteria that must be met to qualify.

- This technique avoids the double tax but results in the estate essentially being taxed at dividend rather than capital gains tax rates.

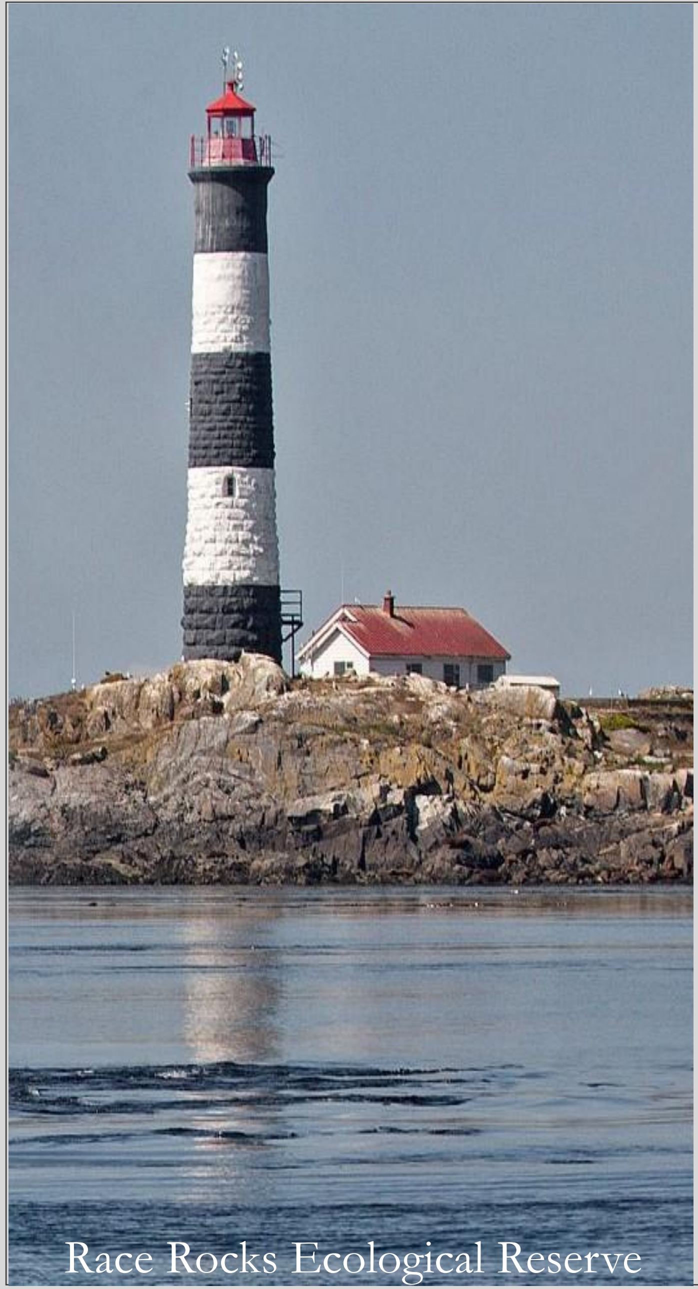
- The "pipeline" planning involves a technique to take advantage of the new high cost base in the shares.

- It does not have to be done in the first year after death and results in being able to draw the cost base out of the company tax free - it is more complicated and may not work with non-resident beneficiaries.

Why Prepare an Estate Plan?

A proper estate plan is essential to ensure that your assets go to the beneficiaries that you desire and to limit the amount paid to the tax department.

QUESTIONS?



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