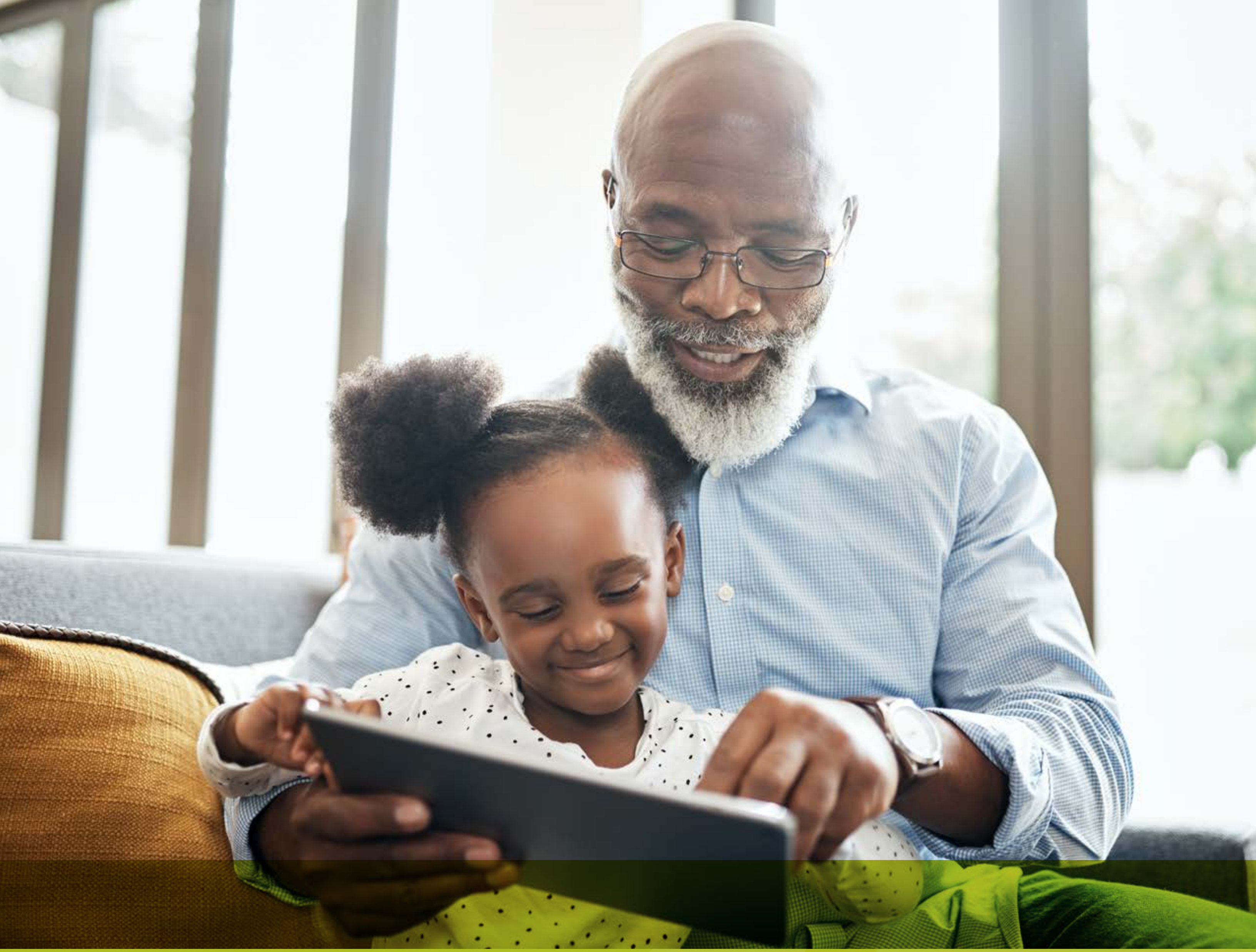

Cap taxes with an estate freeze

Ease the tax burden on you, your family and your business with an estate freeze

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What is an estate freeze?

Though the term may sound sophisticated, an estate freeze is a commonly available technique that is used to defer the tax on the future growth of your assets by passing all future growth to the next generation.

While the legal structure of the freeze may differ, the general principle of a freeze remains constant: Lock in the value of the chosen asset(s) in order that the tax on any future gains will be deferred to a later date.

By undertaking the freeze, an individual (the “freezer”) can defer the payment of future taxes for years or even decades.

Who might consider an estate freeze?

An estate freeze should only be considered once further increases in the asset value are not required to secure the current owner(s)’ financial future.

The tax savings benefits of an estate freeze are emphasized for those in higher income tax brackets.

What types of assets can be frozen?

As a general matter, any asset which is likely to gain in value is a candidate for an estate freeze. In the common business situations, the value of small business corporation shares may be frozen in order to concurrently reduce taxes, split income and leverage up the $1,016,836 (2024) lifetime capital gains exemption.

In family situations it may be the family cottage or recreational property or a personally-owned investment portfolio that is frozen.

When might a freeze be undertaken?

Common situations and issues calling for a freeze to be implemented include:

- Orderly arrangement of succession to a family business
- Income splitting, including optimizing available capital gainstax exemptions
- Small business expansion planning
- Isolating legal ownership of assets to insulate against creditors or claims in a marital dispute
- Probate tax minimization planning
- Arranging for the transfer of a cottage or recreational property from a parent on to adult children or grandchildren
- Anticipating the bequest of a growing investment portfolio

Typical corporate estate freeze

In a typical corporate estate freeze, the owner of the common shares of the company will exchange those shares for fixed value preferred shares. By making the appropriate elections under the Income Tax Act, the exchange of the shares will not be taxed until the freezer dies. New common shares (and the eventual tax on future growth in value) will be issued to the freezer's children or grandchildren.

Advanced estate freezes

While a business may use the types of strategies discussed so far, more advanced structures may be necessary, particularly where an existing business corporation is involved.

In addition, the particulars of the situation may warrant the use of one or more trusts to hold shares and provide an extra level of control to the freezer.

The family estate freeze

As a parent, you may have already effected an estate freeze without realizing it, if you have ever done any of the following with your child(ren):

- Given a substantial cash gift
- Given a particular asset as a gift, including real estate or an investment
- Loaned a large sum of money
- Sold an asset, whether at it's fair market value or for some other value

Considerations in a family estate freeze

In the family context, you are likely undertaking a transfer of property that will eventually happen anyway. Still, in choosing to proceed with the freeze, due consideration must given to:

- Tax and cash flow effects of any deemed dispositions
- Attribution of future income and capital back into the hands of the freezer

The structure of the estate freeze will generally be only as complicated as your existing affairs warrant. However, to defer taxes on existing gains on assets to be frozen, a corporation is generally required. There are legal and tax implications that must be borne in mind, and therefore proper documentation should be prepared to support:

- Legal enforceability of the transaction
- Timing of ownership transfer
- Determined value(s)

Variations for later planning

Thaws, melts, gels and re-freezes are used to describe planning alternatives for contingencies that may arise down the road. Despite the cute names, these can be very complicated. Flexibility can be built into the freeze at the outset to allow these to be pursued at a later date.

Are there risks?

If structured improperly, the freeze may be disallowed in whole or in part by Canada Revenue Agency and taxed as if the estate freeze did not take place, possibly leading to double taxation.

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