

BUSINESS WIND-UP, BUY SELL

Corporation

Structuring
and funding
your business
succession plan



The Succession of a business and opposing priorities

- The deceased's beneficiaries require cash for the shares.
Otherwise inheritances are tied up in an illiquid business in which they have no ongoing interest
- Surviving shareholders require the shares to own themselves, or to cancel.
Otherwise control of the corporation is shared with 'strangers' who may have no ongoing interest in the corporation's best interests

The tax hit on the death of a shareholder

- Apart from potential provincial probate taxes, there are no succession taxes/duties
- However, upon death all capital property is deemed disposed of and the accumulated capital gain is taxed
- This tax can be reduced for eligible Canadian small business shares to a lifetime maximum of \$750,000
- Shares that are rolled-over to a spouse will remain untaxed until the spouse dies or otherwise disposes of them

Meeting the tax hit

Several alternatives exist to deal with this challenge:

1. An unfunded plan is the equivalent of doing nothing at all
2. Investing in a sinking fund requires time and predictable returns. Direct investments may or may not provide sufficient cash, particularly if there is a premature death.
3. Insurance funding offers a number of benefits
 - It's **legally sound**
 - It offers **comparable returns**
 - It can be used for **income**
 - It can offer **accessibility** of cash value
 - It provides **assured cash** at death

While insurance premiums are not tax-deductible to a business generally

- Corporate-paid premiums are less costly than personally-paid premiums
- The insurance death benefit can be catered to grow in line with the growth of the business
- Corporate-owned insurance protects death benefits from personal creditors
- Advanced strategies involving trusts and/or holding companies can be used for more complex tax and creditor protection needs

Summary

- Capital gains tax will be payable at death
- An unfunded plan is no plan at all
- An insurance funded plan assures adequate cash at death and can be structured to provide investment returns and liquidity comparable to an investment sinking fund
- Empire Life Trilogy® charges no surrender fees and only 0.75% on policy loans, thus allowing for 'no-penalty' lump sum withdrawals or even policy surrenders
- Financial, tax and creditor benefits can be realized through a properly structured plan

A Funded Buy Sell Agreement

A Buy Sell Agreement is a written contract between the shareholders providing for the sale and purchase of an ownership interest as well as the necessary cash in the event of the death of one of the shareholders.

A properly designed agreement

- Places the surviving partners in full control
- Establishes a means of determining the fair value of the deceased's ownership interest

Each business and each shareholder of a corporation will have unique qualities and goals that must be dealt with on a case-by-case basis in consultation with relevant, informed professional advisors, including consideration of personal characteristics, interpersonal dynamics and family issues.

STEPUP

Providing you with the estate planning and wealth strategies that matter most, the Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team is comprised of practicing professionals whose primary objective is to support you as you help your clients reach their financial goals.

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