BAN TACS
National Accountants Group

NEWSFLASH

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Welcome to our latest newsflash, this edition covers some of the tricks and traps that affect the taxation of deceased estates. The following articles give you an idea of how a little bit of knowledge and careful planning can make a big difference to your family.

Passing The Family Farm To Your Heirs

The CGT trap here is when your heirs do not continue to farm the property. It is quite possible that if you sold the property while you were alive or they did so within two years of your death that the small business concessions would have meant no CGT was payable on any of the capital gain accrued over the years you owned the property.

If you use a property as an asset in your business and your turnover is under \$2mil a year or your net business assets (includes the assets of other entities you control) are under \$6mil then you may qualify for the small business CGT concessions which in the right circumstance could mean no CGT is payable at all on the sale of the property. Further, you may be able to put \$1.445mil per qualifying owner, of the gain into superannuation without being taxed going in (or out) or affecting any of the normal superannuation caps. If this money is still in super when you die it can pass to your heirs tax free even if they are not dependent. These concessions are huge and should be a major part of your estate planning, so get advice.

Explaining how this can all go so wrong is best done by way of an example. Consider a farm held only in the husband's name that is left to his wife. She chooses to continue to live in the farm house but not to continue farming the land. The husband owned the farm for more than 15 years but unfortunately purchased it (or for that matter inherited it from his parents) after 19 September, 1985 so it is a CGT asset. If he sold the farm before death or the estate sold the farm promptly after his death, then assuming the small business CGT concessions apply then the 15 year ownership concession would mean no CGT was payable at all and he could put \$1.445mil into super which upon his death his wife could receive as a reversionary pension with the income from that also tax free to his wife and the super fund.

None of these concessions would apply, including getting the money into superannuation if the farm is not sold within 2 years of his death. Though if the delays are outside her control ie delays with probate then the ATO has the discretion to extend this under section 152-80 1997 ITAA

Here is an interesting twist on this trap. The beneficiary is liable for the tax on all the capital gain made on the property before and after the death. For the small business concessions to apply to a property among other things the property must have been used in a business for 7 ½ years or half the time it is owned, whichever is the shortest period of time. The start of this period is when the beneficiary inherited the property. So even if the deceased did not farm the property it is worth the heir doing so before selling!

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Life Insurance Held Inside Superannuation

Life insurance premiums are not tax deductible. This is why many people choose to hold their life insurance inside of superannuation. They can either use their employer contributions to pay the premium or at least get a tax deduction for making the contribution to superannuation that goes towards their premium. That all makes perfectly good sense, until it is time to collect.

In the event of your death your spouse and children under 18 can receive the insurance payout from the superannuation fund tax free and the fund doesn't pay tax on it either.

If you are single and your children are over 18 this is not ideal as they may have to pay tax on the payout of the insurance from your superannuation fund. And it is serious tax. Around $80,000 on less than $400,000. There are a couple of options to avoid this:

Take your life insurance out of superannuation – this means paying the premium out of after tax dollars. Considering the low possibility of collecting on the policy it may not be worth it.

Advise your superannuation fund not to claim the premiums as a tax deduction – this is a bit better than the option above as the superannuation is only getting a tax refund of 15% on the premiums and you can at least still claim the superannuation contributions as a tax deduction against your marginal tax rate. Note this will only reduce the maximum tax paid on the superannuation pay out down to 17% from 32%. And this is a bet you hope you will lose.

Take the insurance payout before you die – not as crazy as it sounds. If you can get a couple of medical practitioners to sign off to say you have less than 2 years to live you can normally get your life insurance paid out early. Providing the superannuation fund pay it out as a terminal illness payment (make sure it is not a hardship payment) you won't be taxed on it. This point is made more as a warning to people going through terminal illness to act now rather than thinking oh well that is a bonus there for my adult children or parents when I die.

Make sure the superannuation fund pays it to someone you live with – this point is not about your spouse, that is another section of the law, any payment to them is protected from tax. This is simply an interdependency relationship which could be a mate, a sibling, adult child or parent but not a paid carer. Someone you live with and rely on or they rely on you. Not just flat mates but interdependency. Inter dependants can also be consider tax dependents for superannuation purposes and so receive your life insurance held inside of superannuation tax free. A binding nomination is an effective way of making sure that the payment goes to them and make sure your superannuation fund is aware of the inter dependent relationship so they don't issue a PAYG summary.

Further Reading - http://www.bantacs.com.au/booklets/Death_And_Taxes_Booklet.pdf

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