Estate Planning

NOT JUST ASSETS

GRANT PEACE OF MIND

Planning your estate now means that after your death, you can effectively distribute your assets according to your wishes. And while nothing can reduce their emotional stress and hardship, you will also guarantee less worry for your loved ones in understanding the financial consequences. Particularly where a surviving spouse is the prime focus of the estate planning, a better approach is to implement the estate planning process over time so your ongoing dependents understand the financial implications.

Estate planning is the process of arranging your financial affairs so that when you die, your wealth will be distributed according to your wishes, your dependents will be financially looked after, and your estate will be settled with minimal delay, cost and tax penalties.

You may be working with a lawyer to prepare your Will and possibly a Power of Attorney, and your accountant knows you and your financial history. Burrell will work hand in hand with your existing advisors to achieve the optimal estate planning outcomes for you and your loved ones. If you don't have existing advisors, we can certainly recommend some to you.

How do we help?

There are many issues to consider, made more complex by the fact that how you treat one area of your estate can often affect other areas. We'll help you sort through the ins and outs, and give you and your loved ones understanding and peace of mind that the responsibility of your estate and their financial future is something they won't need to worry about.

Below we've touched on some of the areas commonly considered in estate planning. Note this is general advice only and you should not take any action without first consulting a Burrell estate planning specialist.

Superannuation

There may be assets not included in the estate, like superannuation. A deceased's superannuation entitlement can be paid as a lump sum to their estate or to a nominated beneficiary, or in some cases as a pension to a dependent.

Each option has different consequences. It is most common for super (including a payout of life insurance held within super) to pass to a nominated beneficiary, rather than via the estate. Self Managed Super Funds may provide more flexibility for estate planning and work well together with testamentary trusts.

Testamentary trusts

A testamentary trust is a trust established under a Will that comes into operation upon death. A common scenario is a husband leaving his assets to a testamentary trust of which his wife is a trustee and also a beneficiary together with their children.

The Will-maker can dictate the specific terms of the trust. Other advantages include flexibility, paying less tax as well as tax-free bequests, and protected assets in the event of the beneficiaries' divorce or bankruptcy. There are some disadvantages: tax returns for the trust will have to be lodged each year and any tax losses are trapped inside the trust.

Life insurance

Like super, life insurance doesn't usually pass through the estate but is paid directly to the nominated beneficiary. It is a worthwhile exercise to consider whether life assurance should sit within the super fund or whether it is best held in the name of the individual.

Property

Property (like shares) that is held as 'joint tenants' pass directly to the survivor, independently of a deceased's Will. Whereas the deceased's share in property held as 'tenants in common' passes to the estate.

Note that if super, life insurance and property are all held outside of the estate, then there may be some risk that the estate may not have enough assets to pay off the estate's debts and the executor will be left with insufficient funds.

Also, from an asset management viewpoint, you should consider whether your surviving spouse or beneficiaries wish to maintain your residential investment properties. If not, gradually selling down and reinvesting in listed property trusts and other managed property investments may mean less management and maintenance.

Shares

If you hold shares, will your surviving spouse or beneficiary assume the management of the share portfolio? If that is the case, they will need to understand the shares owned and be comfortable with the arrangements made to manage them.

Burrell's Premium Portfolio Service (PPS) is useful for estate planning purposes as it enables your or your estate's investments to be reviewed and managed. Or Burrell can even take responsibility for the estate's portfolio under our Individually Managed Portfolio (IMP) Service.

Note also that if your shares are held on the ASX's CHESS Subregister it is a much easier exercise for your estate's shares to be dealt with quickly and easily.

In reviewing the estate's shares, the executor should refer to the provisions of the Will. In determining your Will, we generally recommend the powers be broad so the executor/s can give the beneficiaries a choice to take or sell shares as it suits their circumstances. Please discuss this with your lawyer.

Business succession

If you don't have a business succession plan in place then your spouse or beneficiaries may have to deal with a family or other business interest, perhaps with third parties. Business succession involves specifying arrangements for the smooth transfer of your business interests. A buy/sell agreement may be appropriate to agree in advance as to the valuation process and the general terms of sale of the business to the continuing owners.

Taxation of an estate – the three year window

As a separate trust, your estate will be a separate taxpayer. In the first three years of its life, an estate will pay income tax at individual tax rates, including the tax-free threshold.

Often a couple keeps income tax to a reasonable level by arranging for income to be earned in both names. If suddenly all the income is earned by the one surviving spouse, there could be a significant increase in tax liability. The estate may be helpful during the transition period to provide some measure of relief while further consideration is given to the disposition of assets.

Virtually all estates should continue for 12 months in any event to protect the trustees from any creditors or debts that may arise. There are many investment and other reasons why estates may continue longer but the matter requires proper consideration.

Capital Gains Tax (CGT)

Decease does not attract CGT liabilities. Rather, the beneficiaries of the assets of the deceased inherit the cost base of the deceased. For assets acquired post-CGT (i.e. September 1985) the beneficiaries stand in the same shoes as the deceased in terms of cost base and indexed cost base.

It may be worthwhile for the estate to realise some of its gains and pay income tax at the individual tax rate to step up the individual cost base. If the estate sells assets it will benefit from the 50% reduction in capital gains that applies to individual taxpayers generally.

However if the deceased acquired assets before September 1985, these assets acquire the market value as at the date of decease. No tax will have to be paid on the difference between the pre-1985 cost base and the current market value.

Non-residents or charities may have to pay CGT on bequeaths made by the deceased. And special rules and exemptions may apply to collectables, personal use assets and main residences.

Accounting

Estates are a separate trust and require separate accounting. And like all accounting matters, costs are generally minimised if the estate's accounting is properly set up at the start.

A key accounting issue is the maintenance or creation of records, which show the cost base for all investments and other material assets. If the deceased has only advised his/her accountant of realised gains and losses, there is a task to complete a current investment ledger showing cost bases and indexed cost bases for CGT calculations. We recommend you maintain an investment ledger so your loved ones don't need to recreate such records. The Burrell Premium Portfolio Service (PPS) may assist you and your accountant with these needs.

Get started

Contact our estate planning specialists for an obligation-free conversation. Call 1300 4 BURRELL.

Burrell's Estate Planning team (anticlockwise from front): *Karen Adams, Lynda Myers, Alicia Kendall, Mari Ashted and Chris Burrell will help you ensure your estate is settled according to your wishes and with minimal delay, cost and tax penalties.*

For associated information, refer to Burrell's Deceased Estates Services material.

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Contact us

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