

PERSONAL FINANCIAL STRATEGIES

YOUR PERSONAL GUIDE TO WEALTH CREATION



Planning for the unexpected

The beginning of the year is often a time when business owners take stock of the year ahead, set goals and decide which strategies will provide the best result.

More often than not, personal planning is set aside particularly when it comes to preparing a will. Death is a time of high emotion, of loss and of changing financial circumstances. For loved ones, a will can reduce some of the stress and uncertainty involved due to changes in circumstances.

Prepare a will

A will is a document which directs the way in which a person wishes to have his or her property distributed after death. In order to be effective it must comply with the state legislative requirements in format and content.

Anyone over the age of 18 years, who is of sound mind and understands what it means to make a will is able to make a will. It is advisable for anyone who owns property and would like to pass it on to relatives or friends after death, to prepare a will.

A will is not compulsory. However, there are some disadvantages in not having a will. If a person dies without making a will, their estate will be distributed on a statutory basis of inheritance, which presumes that

the deceased person intended to benefit their next of kin. Spouse and children will be the primary beneficiaries of the estate. If there are none, the estate will be distributed to remaining family members. If there are no relatives the property passes into the ownership of the state.

There are other limitations. Statutory distribution does not provide for specific items to be given to particular individuals.

In addition, statutory distribution does not address circumstances where the deceased person intended to give a larger share to one relative than another, or did not wish to make a gift to a certain relative at all.

Powers of attorney

Whilst a will provides direction in relation to disposal of property after death, there may be times when an individual needs to authorise another person to act on their behalf while they are still living. For example, an individual travelling overseas may need to authorise another person to act in their behalf, even in specific circumstances whilst they are absent. This is achieved with a power of attorney.

A power of attorney is a legal document, by which one person authorises another (known as the 'attorney') to make financial decisions and sign papers on their behalf.

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ISSUE NUMBER 7

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When the power of attorney is signed and provided to the attorney, it can be used to establish that he or she is authorised to act on behalf of that person. Even though an attorney has been appointed, a person is still able to personally carry out any transactions, such as banking and the sale of property. A power of attorney can also be limited to a specific purpose, or for a specified time period.

A power of attorney can be revoked or cancelled at any time. It is also possible to appoint an attorney and simply retain the documents inferring the powers until it is required.

Preparing a will or power of attorney requires care and should be considered as part of your overall estate planning strategy. If you have not already done so, take the necessary steps now to prepare a will, and consider to what extent a power of attorney may benefit you.

Enduring power of attorney

If a person loses capacity through unsoundness of mind (due to injury or dementia for instance), the power of attorney becomes invalid. However, an individual at the time of giving the power of attorney, can have the authority continue in the event that they lose the capacity to make their own decisions. In this case a document called an 'enduring power of attorney' is signed.

An enduring power of attorney is different to a general power of attorney for several reasons.

- the intention for the enduring power of attorney to **continue** is stated in the document;
- the attorney is required to **accept the appointment** before the power of attorney is effective;
- the signatures must be **witnessed** by a legislatively prescribed person such as a solicitor or barrister; and
- the witness cannot be the **same person** as the proposed 'enduring attorney'.

An enduring power of attorney must be executed when an individual has the capacity or is of sound mind. An attorney cannot be appointed by an individual after they have lost the capacity to manage their own affairs. It is possible, however, to make enduring power of attorney arrangements that remain dormant and only become effective under particular circumstances.

GST changes for property developers

The Australian Taxation Office (ATO) recently released an Interpretative Decision which significantly changes the position for developers of new residential premises constructed for the purposes of sale, but leased temporarily, pending sale. With the current slowing of property sales, these changes provide welcome relief for property developers.

Under the existing system, the ATO required developers who leased out new residential premises to repay the input tax credits claimed in respect of those premises being leased. A property developer that managed to later sell the leased premises was entitled to claim back a portion of those input tax credits initially paid to the ATO.

The ATO now advises that where new residential premises are leased and the property developer simultaneously 'actively markets' the premises for sale, the developer will only be obliged to make a partial adjustment.

The ATO has also made the following points in relation to substantiating whether new residential premises have been 'actively marketed':

- the active marketing for sale may include activities such as listing the property for sale with a real

estate agent, advertising in relevant publications or through property websites and showing prospective buyers through the property;

- where the property is strata units, commercial sales of some of the listed units provides evidence that the property has been actively marketed; and
- an unsuccessful auction of a property due to poor market conditions would normally provide evidence of a genuine intention to sell the property.

Where the property is listed for sale at a price that is significantly above the market value, this may indicate that the

property is not being actively marketed for sale or there is no genuine intention to sell the property.

This evidence is particularly important in the current economic climate where the ATO may become suspicious of developers taking advantage of increasing rental returns to claim input tax credits for properties constructed for the purpose of rental rather than sale.

As this new position represents a significant concession, taxpayers that have relied upon the previous ATO opinion should review their position in order to obtain appropriate GST refunds.



Asset protection using superannuation

Superannuation law requires that superannuation funds are maintained for the sole purpose of providing for the retirement of members. However, there are other benefits that can be achieved from a superannuation fund before retirement, particularly in light of a slowing global economy.

Recent amendments to the Bankruptcy Act 1966 ('the Act') offer significant opportunities for asset protection through the use of superannuation funds.

Other than the practical means to extract money from a business, many business owners are not aware that superannuation contributions may be used to gain unlimited asset protection from creditors in the event of unforeseen future financial setbacks. That is, provided contributions are not made with the intention of defeating creditors.

The Act contains provisions enabling trustees in bankruptcy to recover super contributions that were made in an attempt to escape creditors. A number of tests apply to determine the extent to which superannuation contributions are legitimate.

Sole purpose. Superannuation fund members should be able to demonstrate that contributions were made for the primary purpose of providing for retirement. Factors that may come into account include the extent to which contributions are based on a

documented financial plan, particularly one prepared by a financial planner.

Solvency. Timing of contributions are also indicators. Contributions that are made when a debtor is insolvent or likely to become insolvent are at risk. The law provides a new mechanism for trustees in bankruptcy to recover payments by insolvent debtors to superannuation funds. These do not include Superannuation Guarantee Charge payments by employers.

Normal contributions. Trustees in bankruptcy may also consider the extent to which superannuation contributions differ from the pattern of contributions previously established. An even pattern

of contributions provide some evidence of the intention of contributions and may provide the greatest asset protection.

Large contributions. Where large contributions are made, even as non-cash contributions, such as shares or real estate, fund members should substantiate reasons for making extra-large super contributions. Sudden or extra-large contributions may suggest that a person is attempting to defeat creditors from attaching a claim.

Those contributing to a superannuation fund should take care to ensure that they do not inadvertently establish a pattern that suggests that contributions have not been made for appropriate reasons.



ATO focus on property transactions

The Australian Taxation Office has identified several areas of attention for their 2008 - 2009 compliance program. A significant part of the program is currently taking place in the goods and services tax (GST) property segment.

The ATO is using the program and external data available from state revenue and lands titles offices to identify real property transactions. These are compared to activity statements and income tax returns.

The property focus for the 2008-09 financial year includes looking at taxpayers who:

- incorrectly report the sale, purchase or transfer of real property;
- do not record an adjustment when they purchase property as a GST-free going concern;
- do not record an adjustment event where there is a change in creditable purpose of a property – for example, this can occur when property developers rent out new residential premises before selling; and
- incorrectly apply the margin scheme on property sales.

Future risk management

The ATO has signalled its attention to increase its focus on other issues emerging in the property sector.

These include circumstances:

- where entities do not make appropriate adjustments when GST registration is cancelled;
- where sales are made to associates for inadequate consideration;
- where retirement village operators incorrectly apportion GST credits during construction, leading to a decrease in net GST paid;
- where taxpayers incorrectly claim GST credits on purchases when the intention is to make an input taxed supply of residential property; and
- where property developers do not report the sale of properties or withhold lodgment of activity statements.

Planning your exit

A recent survey has revealed an alarming trend of an increasing number of small business owners selling their businesses for less than a year's earnings. In effect they are giving their business away.

The continued increase in the volume of businesses for sale due to baby-boomer retirement combined with a shortage of funding available due to the global financial crisis has resulted in businesses either taking longer to sell, selling for less, or both. For business owners that are looking to retire on the

proceeds of the sale of their business, this means trouble.

Another factor beginning to impact on business sales is the possible implications of a slower economy on future revenue projections. In a buyer's market this directly translates into lower prices.

Exiting a business is something that should take as much planning as starting a business. It represents a time when business owners seek to capitalise on the fruits of their labours and providing for their retirement and creating a nest-egg for future generations. Be aware of some of the complexities and develop an exit plan that can be executed when required.

The Bookshelf

The Coming Economic Collapse: How You Can Thrive When Oil Costs \$200 a Barrel

By Stephen Leeb & Glen Strathy

In *The Coming Economic Collapse*, Leeb and Strathy debunk the myths of limitless oil and tell the facts about the coming years of an energy crisis that will affect everyone.

This book is filled with brief histories of oil-rich nations and shows how the rising demand for oil from developing nations, such as India and China, present the world with a challenge it has never faced before. Severe financial hardships are predicted for many people and companies if they are not prepared. For the few that know just what to invest in, the future can be brighter than ever. In fact, it can be quite 'golden'.

Mostly gloom and doom, the book offers some hope for the smart investor but not much hope for the average individual who cannot afford to develop their portfolio, if they even have one.

The Coming Economic Collapse is a dire warning and, once again, warns us that the poor will keep getting poorer while the rich get richer unless some drastic steps are taken on all fronts – economic, social, psychological, financial and environmental.

Other than what to invest in, the authors do not give much advice on how to survive in the future - and that may be the scariest thing of all. This is an interesting read that presents an economic perspective for any investment strategy.

We are sometimes asked if we are able to help additional clients. We are a growing firm and do appreciate your referrals. We consider it a compliment when you recommend us to your friends and business contacts.

Ten Planning Opportunities

You can use many different strategies to maximise your wealth and minimise your taxes. The ones that will work best for you will depend on your unique situation. Start the review process by considering these ten planning opportunities. After you have completed this form, call our office to discuss your needs. We would be pleased to help you develop a plan that achieves your financial goals.

- Is your business (including strategy) plan up-to-date and communicated firm-wide?
- Do your plans include ways to grow the top and bottom lines?
- Do you have a website and e-commerce strategy?
- Do you know the value of your business?
- Do you have a sale or exit strategy and tax minimisation plans?
- Does your shareholder agreement adequately provide for disposal of your business?
- Do you have policies that tie your key staff to the business?
- Are you taking advantage of capital gains tax concessions?
- Do you know your competitor's strengths and weaknesses including pricing and marketing strategies?
- Does your business structure currently allow you to easily sell off part of your business?