Family Trusts and Asset Planning

By Ian Mellett, B Comm, LLB, H Dip Tax

As you embark on your journey together as husband and wife, now is the opportune time to review your situation and meet with a solicitor to "set your future platform" in place, so to speak. In a previous article I discussed Wills and the impact of a marriage on existing wills. In this article I intend to cover Family Trusts and the value that such an entity can provide to you during the course of your years ahead.

At the outset, it should be borne in mind that the reasons for implementing a trust structure are extremely important. Your family circumstances clearly play a pivotal role in this regard.

Outlined below are a number of reasons why implementing a trust structure could possibly be of benefit to you and your family:

- Protection of core family assets for present and future generations (this has been the traditional use of family trusts and should be the prime consideration when any trust is established).
- Protection from business creditors (separation of core family assets such as the family home from business risks).
- Protection of particular beneficiaries (example, children with special needs, educational trusts).
- Protection from matrimonial property claims and de facto claims.
- Protection against possible income tax consequences and future taxes.
- Protection against the likely consequences of inflation.
- Incidental benefits in relation to means testing and rest home subsidies.

The prime purpose of the trust would be to protect core family assets which you have built up for the benefit of your children and grandchildren, at the same time ensuring that you have the use of and access to trust funds during your lifetime without interference from others. The primary concern of the trust would, in the interim, be your well being, but in due course you may provide for your children and grandchildren who ultimately will have the control and benefit of the trust fund. Transferring any assets at this stage would be prudent in the sense that you can cap the value, and any increase in value of the assets after the date of transfer to the trust would be an increase in the hands of the trustees. This is particularly pertinent in the event of the re-introduction of estate duty at some later stage.

When acquiring an asset such as a property, it is important that you make provision for the trust to purchase the property at the onset. You are able to do this by stipulating that the property is to be purchased by yourself "and / or nominee". This will allow you to set up a family trust or other legal vehicle and for that entity to complete the purchase. You should also consult with your professional advisors regarding the structuring of any borrowing that is required to complete the purchase.

It is important that the administration of the trust is properly attended to. This includes performing the annual gifting program wherein yearly gifts of $27,000 each are filed with the Inland Revenue Department. Keeping an adequate "paper trail" will ensure that the trust records are up to date for any audit purposes.

Various legal documents need to be put in place when establishing a trust, including of course the Trust Deed. There are three main groups of parties involved - the settlors are the persons who set up and transfer assets to the trust; the trustees are the people who hold the legal ownership of the trust assets on behalf of the beneficiaries; and the beneficiaries hold the beneficial ownership in the trust assets and include, amongst others, yourselves, your children and grandchildren.

I also recommend that a Memorandum of Wishes is completed. This is not binding on the trustees, but sets out the manner in which you would like the trust to be administered and is a valuable guide for the trustees. It's an effective way of ensuring that, on your deaths, specific requests that you had in mind may be given effect to by the trustees.

Trusts are an invaluable asset protection tool and mechanism for preserving one's wealth. ♥

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