

THE Quarterly Dividend

Vol. 28 No. 2 Your guide to income tax & financial planning

FAST TRACK



Registered Educational Savings Plans

Registered Education Savings Plans are incentive plans designed to encourage individuals to accumulate savings to provide for the post-secondary education of named "beneficiaries", typically children, grand-children, non-related persons or even the contributor himself.

In this Issue:

Dying Without a Will ..Pg.1 & 2
 Shareholders' AgreementsPg.2 ,3 & 4
 Medical Expenses.....Pg.4

Dying Without a Will

One of the most important things you will ever do for yourself and for your family is to prepare a will now, before it is "too late". This is your opportunity to instruct them on what you would like to happen to your assets after you have passed away.

If you die without a will, you are termed to have passed away "intestate". In these situations your property will be divided up according to a formula determined by your province's succession legislation. This is a standard procedure administrated by government bureaucrats without recourse.

Division of Property

The government will conduct an "estate auction" where your assets will be converted into cash at whatever value they will bring. From these proceeds the total amount available for distribution is determined. How the property is divided will depend upon who has outlived you. In most cases, the spouse will inherit the first \$200000 of your assets with the remainder split between your spouse, children and grand-children. You lose the right to decide the allocation as you would have seen fit.

Your Children

Parents often worry about what will happen to the "kids" after they pass away. If they cannot be present, they want the peace of mind of knowing that the children will be taken care of by someone with

whom they have discussed matters that are likely to come up "down the road".

If you die without a will, children under the age of majority (usually eighteen) will be appointed a guardian by the province in which you reside. Needless to say, this individual will be someone you might not have chosen on your own.

In addition, the property to which minor children are entitled, as indicated above, will be paid into Court until they reach eighteen. At that time it will be distributed to them.

You may not wish your child to come into a large sum of money at so young an age. Maybe you would like these funds to be used for his university education when "he gets there" or some other purpose that you feel would be better for him when he is older and more mature. Unfortunately, without a will, you cannot let your feelings be known.

Spouses

Under most provincial legislation, only married spouses need apply. Common-law relationships are not recognized, and these couples do not qualify for the division of property outlined above.

The "left out" individual might be successful in suing the estate claiming to be a "dependant". But this will be an expensive process and may not work.

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There are three major advantages to RESP's. These include (a) tax deferral in that although the contributions themselves are non-deductible from income in the year they are made, the income earned in the plan is not subject to tax, thus allowing the plan to grow more rapidly than it would have had the funds remained in the hands of the contributor; (b) income splitting in that when the funds are ultimately withdrawn from the plan, the beneficiary/student is likely to be paying income tax at a lower marginal rate than that of the contributor; and (c) federal and provincial incentive grants will often match contributions up to \$2500 per year.

Up to \$50000 in contributions may be made on behalf of any single beneficiary and may be made until he/she is thirty-one

Asset Management

Most provincial legislation dictates that the surviving spouse will be the "first choice" for appointment as estate trustee. This may not be a problem if he/she is able to administer and distribute your assets. But maybe you had someone else in mind. Legislation allows the Court to appoint another party, but he/she must be approved by them. In some instances the Court will require the appointed estate trustee to put up a bond to protect the estate throughout the time that the assets are being distributed. This will cost money, probably borne by the estate itself.

Donations and Gifts

There is no provision in provincial legislation for charitable donations or gifts of particular assets to someone of your choice. In fact, if you pass away intestate and there is no "next of kin" to survive you, your entire estate becomes property of the government.

Shareholders' Agreements

Here is one of the considerations that someone thinking about going into business "for himself" often overlooks. Do you want to be a "big fish in a small pond" where you are responsible for the business you have created, and everything that goes with it? Or do you want to be a "small fish in a large ocean" where you have some autonomy within an organization, perhaps running your own division, but ultimately answering to others.

We have often addressed the needs and issues of the "owner-managed" company. This article will focus on those individuals who are "minority shareholders" in a corporation or a "minority partner" in a partnership.

There is a certain attraction in not wanting to wear all the hats needed to start-up a company, grow it as best you can, and then run it on a day-to-day basis. Sure, you can

Conflicts

From time to time, dying intestate will result in conflicts between "common-law" spouses and the minor children they had together. Legislation may stipulate that estate assets are to be distributed to the children, but only after reaching the age of majority. In the interim, the common-law spouse may have little or no income of his/her own, having lived with the deceased while depending upon his/her support. The surviving partner may have to go to court as outlined above to procure funds from the estate in order to live. These, of course, will reduce the money available to the children when they grow older.

The Last Word

Dying intestate leaves problems behind for your loved ones. Drawing up a will can take time and a lot of thought. But in the long-run it will be worth it.



hire others with the expertise and experience required in the areas you cannot cover, but they are unlikely to bring the same passion to their positions that you would have exhibited had you had the time to attend to these duties.

There is also the likelihood that working with others will allow you certain opportunities that you may not be able to realize on your own. You only have access to a finite amount of time and resources. Joining in with others may allow you to reach a wider range of people and capital that you might have been able to muster on your own.

It is important to remember that if you choose this option, you are making as big an investment in a business that you would have made had you decided to "fly solo". Select your partners wisely, individuals you can trust and with whom you "get along".



years of age.

The rules under which RESP's operate provide that education benefits can only be paid to "bona fide" students attending a qualifying educational program at a post-secondary educational institution. Further, the plans must terminate after thirty-five years.

What happens when it appears that the beneficiary for whom the plan was established will not be attending post-secondary studies or the time limit is about to expire? It does not happen often but there are two options that the contributor can consider: (a) transfer the plan to a related beneficiary who might be in a position to take advantage of it; or (b) receive a refund of contributions. The returned money is composed of two elements. The amount that was contributed is returned tax free. The amount of

Then enter into a contractual agreement covering as many of the areas outlined below that you are able to negotiate, preferably before beginning work within the company.

Under current law, minority shareholders of private companies have very little legal protection. Their only statutory right is the ability to examine the books and records of the company in which they have invested. Any additional rights must be negotiated.

The necessity of such a document is a realization of their "status" within the company. Minority shareholders (a) own shares with little or no liquidity. If you own 25% of a private corporation and you choose one day to "get out", there is no ready market of investors who may be willing to jump in and take your place; (b) own shares that are subject to transfer limitations. This means that you must hold on to your common shares for a certain length of time, usually two to five years except in limited circumstances and if you wish to sell them, the purchaser must be someone of whom the majority shareholder approves; and (c) expect to be involved in the corporation's management.

From the point-of-view of the majority, (a) minority shareholders who expect to share in the company's management, slow things down and prevent the company from reacting quickly to changing conditions. If every important decision depended upon all shareholders being in agreement, Boards of Shareholders meetings would have to be convened to address the issues involved. This would be costly and time consuming; (b) majority shareholders "enjoy" the funds and services that minority shareholders provide, but they fear the loss or sharing of control; and (c) majority shareholders may be concerned that minority shareholders will abuse their voting or other rights to extort concessions from the majority.

The terms of the shareholder's agreement should address the needs of all parties and

allow the company to function effectively.

Notwithstanding the general consensus that it is a "good idea" to have an agreement in place, the actual structure and content of the document will depend on certain factors: (a) the percentage of the corporation owned by the "minority" shareholder or shareholders will often dictate the amount of negotiating room he has available. A shareholder who holds 45% of a corporation's outstanding equity is in a better "bargaining position" than one who holds only 15%; (b) the nature of the corporation and the shareholder's participation are also influencing factors. Some minority shareholders receive their equity holdings as part of an employee participation plan, while others come into their shares by contributing cash, expertise or contacts to the corporation. The first group will enjoy "statutory rights" within the corporation but probably will not be involved to any degree in other aspects of the enterprise. The second group (who concern us) can expect much broader participation in the company;. This is termed "negotiating leverage".

Here is a list of items that minority shareholders should insist be included in their shareholder's agreement. While the absence of one is not a "deal breaker", the more protection afforded the minority, the better off he will be should any of the terms be called upon to settle a dispute.

The rights of manority shareholders in private corporations should include the following: (a) board representation: The number of directors that they may nominate to the Board will usually correspond to ownership interest. Typically, if a shareholder owns 15% of the corporation's equity, he will be entitled to nominate a corresponding number of directors to the Board; (b) voting rights: the number of directors representing a shareholder on the corporation's board is not necessarily the most critical consideration for the



the accumulated earnings is taxable but can be contributed to a RRSP as long as the contributor has sufficient contribution room to be able to absorb it. If he does not have enough room these earnings are termed "accumulated income payments" and are subject to a special twenty percent "recapture tax" to offset the previously tax-free accumulation. This surtax can be avoided, perhaps by having the contributor forgo RRSP contributions to allow his "contribution room" to grow to a point where the RESP proceeds will be sheltered when they are returned to him.

Thanks for Your Referrals

We very much appreciate your referrals. If you know of someone who can benefit from the services we provide or who would like to receive our publication, please let us know. We will send them a copy with your compliments.

shareholder. More important is ensuring that the vote of its appointed director is required to approve all decisions important to that shareholder. These would include amending the corporation's charter in regard to (i) issuing or redeeming corporate shares; (ii) changing the business purpose of the corporation or entering into a new line of business; (iii) making a "capital call" whereby existing shareholders would be required to contribute additional cash to the company on a "pro rata" basis; (iv) entering into any "fundamental transaction" such as an amalgamation, reorganization, merger or

sale of substantially all corporate assets outside the ordinary course of its business; (v) commencing an "initial public offering"; (vi) creating a subsidiary or affiliate; (vii) borrowing or other refinancing transactions; (viii) dissolving, winding up or liquidating the corporation or filing a "plan of arrangement" or "proposal" for bankruptcy; (ix) initiating or settling any litigation proceeding against the corporation; (x) amending the corporation's dividend policy and (xi) appointing or removing the corporation's auditor.



Medical Expenses Worksheet

Claiming medical expenses on your personal income tax return has become more complex over the years. Here is a brief summary of what can be claimed:

- (a) professional medical services, laboratory tests and examinations, dental services, hospital services, prescribed medicines, apparatus and materials, ambulance charges incurred by the taxpayer, his spouse and dependent children under eighteen years of age;
- (b) employer's contributions to a group sickness or accident insurance plan or a private health services plans and amounts incurred over and above benefits re-imbursed by such plans;
- (c) medical services not available in your area and you have to travel at least forty kilometers to access them, you may claim reasonable transportation expenses incurred if no public transportation is available;
- (d) medical services not available in your area and you have to travel at least eighty kilometers to access them, you may claim reasonable transportation expenses incurred if no public transportation is

available and reasonable travelling expenses, including meals and accommodation costs for the patient and an accompanying individual (if certified by the physician in writing);

- (e) remuneration paid for full-time attendant care in a nursing home or in the taxpayer's home, subject to the more advantageous claim being that of "disability amount" rather than "medical expenses";
- (f) premiums paid to a private health services plan; and
- (g) allowable medical expenses incurred by other dependents, including parents, in-laws, "older dependent children", subject to their eligibility re income.

Once the amounts included in categories (a) to (f) above are added together, the lesser of (i) three percent of the taxpayer's "net income" or (ii) \$2165 is subtracted and an amount calculated. This will be your medical expenses claim for the year, except where category (g) applies to the taxpayer and that amount will be added to the number determined above.



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