

# Succession planning for the private client

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The news yesterday that Steve Jobs was [taking a medical leave](#) from Apple and the coincidental news received by our firm that a good friend and colleague was diagnosed with cancer lead me to think that, of course, life is very fragile and certainly a gift. It also reminded me that succession planning is very critical when dealing with the affairs of a private client.

If you are the advisor for a private client, do you know what would happen in the event of an untimely death of your client? Disability of your client? Do you know your client's intentions on an ultimate succession? Do your clients wish to sell (to the extent that they can) their business interests? If you are the private client, have you thought about these issues?

Succession planning is loaded with tax issues that our firm regularly advises on. A partial list (and certainly not an exhaustive one), would be as follows:

1. Do you know what the tax results would be on an untimely death of one of the family members that holds direct or indirect equity interests in the private client?
2. Are wills in place with appropriate provisions so as to provide maximum desired tax deferral?
3. Has a calculation of the estimated income tax payable been completed and updated so as to put all parties on notice as to what the estimated cash outlay will be on an untimely death?
4. Are sinking funds in place?
5. Is proper life insurance in force?
6. Are shareholder agreements, partnership agreements, or trusts deeds in place and appropriately drafted so as to provide logical succession to the desired parties?
7. If the documents referred to above are in place, are the parties confident of the tax results deriving therefrom? Is there maximum flexibility in the terms of the documents so as to facilitate for possible changes in income tax law into the future?
8. Further to #7 above, are the "good tax pools" being contemplated in the use of any succession plan? For example, is the general rate income pool of a Canadian controlled private corporation (which can provide for eligible dividends being paid from this pool which are taxed at a lower rate to the recipient) or the capital dividend account (which can result in tax free dividends being received by the recipient) properly utilized? Are the pools being fairly allocated?
9. If the succession plan involves transferring assets to the next family generation, have the income tax consequences of this been thoroughly thought out? Many private clients are surprised to learn that the transfer of assets to the next generation will generally not occur tax-free. Approximately 25 years ago there used to be Canadian income tax provisions that would provide for a tax deferred transfer of certain private corporation shares to the next generation. These provisions no longer exist (with the exception of certain farming or fishing property) and, therefore, the transfer of assets to the next family generation needs to be carefully thought through.
10. Have the GST or HST consequences of a succession plan been considered? We find that this is an often missed component of a succession plan.

11. Have potential double tax consequences upon death been thoroughly considered and an action plan designed? For example, to the extent that there is an untimely death and a resulting income tax consequence to the deceased's estate, have the income tax consequences to the beneficiaries of the deceased's estate been considered so as to minimize potential double tax upon the ultimate receipt of the deceased's former property? This is a tricky area of succession planning and, with careful thought, double tax exposure can often be minimized.
12. Upon an untimely disability, will powers of attorney and other legal documents be in effect so as to enable a continuation of the business affairs of the disabled person?
13. Is the private client's corporate structure that is currently in place the best structure so as to enable certain tax preferential deductions (such as the capital gains deductions) to be utilized upon a disposition – forced or otherwise – of the shares of the private corporation?
14. If the client is philanthropic, have the charitable gifts been designed appropriately so as to enable maximum charitable tax credits to be claimed? This is a tricky area of succession planning.
15. If there are US citizens in the family, have the US tax consequences been thought through upon the ultimate succession of assets? On a death, has the US estate tax been considered? The cross-border succession plan is a very complex area of tax law.

As noted above, this list is certainly not exhaustive but hopefully gives you a taste of some of the issues that must be thought through when dealing with succession planning. Please ensure that your – or your client's – affairs are in order so as to enable a logical and tax efficient succession plan. We would be pleased to assist you with your succession plan.