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Estate Planning for the Wealthy – Part II

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In this second and final instalment on estate planning, I will explain how the assets of an estate are distributed in Singapore, and give an overview of estate planning in Asia.

In the first part of this article published a fortnight ago, I discussed the key rationale for estate planning in Singapore. I also touched upon the logic of protecting and preserving wealth for future generations through proper estate planning.

Estate planning done without adequate and proper knowledge of the legal, tax, and practical implications can be devastating for a person intending to distribute his wealth.

This second part of the article will examine the potentially contentious area of estate distribution. Having clearly drafted documents and a tidy legal process is crucial to ensuring that the client's intentions are carried out, especially as the act of estate distribution almost always occurs when the client is no longer around to explain his exact intentions and purposes to all parties concerned.

Estate distribution

The key purpose of estate planning is to decide how an estate is to be distributed among the named beneficiaries. This is not simply a matter of deciding on the beneficiaries of the estate; it also requires a good understanding of all the factors and nuances which determine how an estate may be distributed efficiently. An example is the operation of law. The manner that assets are held, in the form of property ownership, in terms of legal definitions like joint ownership or tenancy-in-common, will help determine the immediate succession to a deceased person's interest in a property or asset.

Another example is often contrary to many assumptions in Singapore. This concerns assets held in a Central Provident Fund (CPF) account. The written will of a deceased Singapore resident will not apply to all monies held in his or her account, regardless of the fact that beneficiaries may not have been nominated to the CPF prior to the accountholder's demise.

An estate can also be distributed through arrangements to have assets transferred to designated beneficiaries upon one's death, under contracts like holding companies, statutory trusts and/or third party life insurance contracts, partnership agreements, and corporate buy-sell agreements. The manner of distribution to the beneficiaries of an estate can be fully predetermined before a client passes away. This can also include living trusts, whether revocable or irrevocable.

If a will has been established before death, an executor of the will would also have been appointed beforehand to help obtain a "probate" from a court, which refers to the legal empowerment and process required to transfer the assets as stated in the will. However, if one dies without a will, he or she is said to have died intestate. An administrator would then be appointed by the courts to distribute the estate according to the relevant intestacy laws of the state.

For an estate which owns a large amount of illiquid investments or assets and businesses outside the country of domicile of an estate's beneficiaries, the probate or administration process may often take years. Therefore, provisions will need to be made to see to the surviving family's living needs.

At our firm, I have sometimes seen cases whereby the estates of wealthy businessmen took a long time to be settled. In such cases, the deceased often had not made provisions to provide sufficient money for their family's ongoing expenses. As a result, the family members often had to resort to embarrassing measures like borrowing money from third parties to keep going in the meantime, before the funds and assets of an estate were unfrozen by the courts for the probate procedures to be carried out.

An important point in the estate distribution stage is therefore to ensure that an estate is distributed as swiftly as possible and as to make provisions for the family during the probate process.

Estate planning in Asia

Estate planning receives a great deal of attention and concern in Europe and the US, where inheritance taxes can be high. Families there have seen their potential wealth reduced drastically by as much as half when no proper estate plan was put into place.

On the other hand, many wealthy Asians are unaware of the important need for proper estate planning, possibly due to the low or zero inheritance taxes in many Asian countries. This has caused many Asians to be ignorant of the importance of estate planning and the ill-conceived notion that it is mainly about avoiding inheritance taxes.

Estate planning has therefore been a little stressed subject for the wealthy in Asia. Many who claim to have an estate plan have, in reality, a trust that was superficially created through a 'jumbo' sized life insurance policy or via a do-it yourself will.

To conclude, preparing a will or trust is easy, but preparing an effective estate plan is a completely different matter altogether. Estate planning done without adequate and proper knowledge of the legal, tax, and practical implications can be devastating for the person intending to distribute his wealth. Seek professional advice from someone experienced in estate planning, property matters and the tax laws applicable. Then, prioritise the client's goals, and implement the plan professionally. Review everything on a regular basis to keep it up-to-date and in line with the client's wishes. Finally, act before it is too late!

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