

To	Participant
From	View University
Subject	Overview – Advanced Estate Planning Course

Set out below is a summary of the 3 key topics addressed in this course.

1 Beneficiary needs

- 1.1 Arguably, one of the most important issues to consider in any estate plan is the particular needs of the potential beneficiaries.
- 1.2 The need to develop specific strategies for beneficiaries is heightened where any beneficiary has, or might potentially have special needs.
- 1.3 Some of the regular examples in this regard include:
 - (a) Beneficiaries who are under the age of 18 – in these situations, not only do guardians need to be nominated, there must also be people who are nominated to control the financial affairs of the children.
 - (b) Beneficiaries who are otherwise unable to manage their own affairs due to ill health or irresponsible circumstances such as gambling or drug addiction.
 - (c) Beneficiaries who have a severe physical or mental disability.
 - (d) Beneficiaries who are considered by the will maker to be 'at risk'. This can be due to poor or anticipated poor choices for a life spouse or in business.
- 1.4 Increasingly, where beneficiaries or asset classes or both are located outside Australia, this can also be a trigger for needing to take specific steps under the estate plan.

2 Capital gains tax planning

- 2.1 As with many aspects of estate planning, at a general level, the capital gains tax implications of death are relatively simple.
- 2.2 There are however a vast array of potential complications that should always be considered, and where necessary, specific steps taken.
- 2.3 In relation to any personally owned assets that pass under a will, there is a specific exemption from capital gains tax.
- 2.4 This means that in relation to assets acquired after the introduction of capital gains tax, the beneficiary inherits the assets with the exact same cost base that the will maker had.
- 2.5 For assets acquired by the will maker prior to the introduction of capital gains tax, the beneficiaries will inherit those with cost base equal to the market value on the date of death.
- 2.6 Some of the areas that can lead to complications from a capital gains tax perspective include:

- (a) Where there are overseas beneficiaries, the roll-over for capital gains tax may be unavailable.
- (b) Where assets are to pass to a testamentary trust, there can be a denial of the CGT roll-over in certain circumstances.
- (c) The exemption for capital gains tax that applies for personally owned assets that pass under a will does not apply in relation to assets that do not in fact pass under a will, for example, assets owned via trusts, companies, and in some instances, superannuation funds.

3 Case study

- 3.1 As with many areas of the law, the starting point for an estate planning exercise must be as full and accurate summary of the factual circumstances as possible.
- 3.2 Industry best practice in this regard has evolved over a number of years, and generally a 3-step approach will be adopted that revolves around understanding that there will be:
 - (a) the right assets;
 - (b) in the right hands; and
 - (c) at the right time.
- 3.3 The foundation of ensuring that there will be the right assets is building the complete picture of all asset category, ownership structures and the family tree.
- 3.4 Having completed that foundation, the process is in many respects driven by a methodical consideration of each and every aspect of a client's circumstances and applying of the 'Toyota 5 Why's' principle – i.e. asking in relation to each particular aspect 'why is this so', or potentially 'what if the following were to happen'.
- 3.5 In all aspects of this analysis, the key guiding theme is to assume that the will maker has only a few days to live.
- 3.6 While this can be seen as particularly pessimistic approach, what it does is ensure there is no distraction in the process about what may occur in some, or indeed, many years' time, which invariably is one of the single biggest reasons for the estate planning process to stall.
- 3.7 To help demonstrate how the estate planning process works, we have created the following factual scenario that, while it may appear somewhat complex, is not necessarily unusual.
- 3.8 In any event, the approach adopted in relation to each of the structures from an adviser perspective is largely the same.
- 3.9 The starting point obviously is the creation of the family tree.
- 3.10 Visuals are used in this regard as an extraordinarily powerful way to capture a large amount of information in a very succinct manner.
- 3.11 You will see in the material that we have also provided an 'interpretation' key. It is not mandatory to use any of the symbols or codes we have used – our only recommendation is that you are consistent in your own office with the symbols that you choose to use.
- 3.12 The approach in relation to identifying the structures in a group is essentially the same as for the family tree, and again you will see that there is a key of suggested symbols to utilise if you are not otherwise using your own symbols.

- 3.13 Having captured the information, it is then a matter of simply stepping through the diagrams and facilitating a client to consider the answers they believe appropriate in relation to all aspects of the diagram on certain people dying or suffering an incapacity event.
- 3.14 In particular, for example, if we assume our clients are Paul and Kylie, some of the questions would include:
- (a) What is to happen if Paul was to die?
 - (b) What is to happen if Kylie was to die?
 - (c) What is to happen if both Paul and Kylie die?
 - (d) What happens both Paul and Kylie and other people that they have nominated to take the key roles (such as trustee, executor, guardian etc.) were to die?
- 3.15 These questions are posed in the context of each of the asset classes and ownership structures amongst the group. In other words, the questions are considered in the context of:
- (a) Personally owned assets.
 - (b) Superannuation assets.
 - (c) Company assets.
 - (d) Trust assets.
- 3.16 They are all asked in the context of the underlying objectives for the ultimate beneficiaries.
- 3.17 As touched on earlier, facilitating estate planning advice is a journey, not a destination, and there are a wide range of tools and advices that specialise in assisting you no matter where you may be with your specialisation in the area.
- 3.18 If you are in any doubt in a particular estate planning arrangement as to what would be appropriate given the factual matrix you are considering, you should always share your concerns with a specialist in your network. Invariably, a collaborative client centric solution will be achieved.