

# My Company

UBS Wealth Planning



**Would you ever go sailing without your lifejacket?** As a top executive, family business owner, or entrepreneur in a broader sense, you must have long ago sailed away from your safe harbor. But remember: Every boat must be equipped with emergency equipment. These may not shape your travel route, but they are there to help you navigate through uncharted waters with greater peace of mind.

Risk-taking is said to be the quintessence of an entrepreneurial spirit. And for our clients, having safety equipment in place means addressing early and regularly enough specific key risks, needs, and challenges. Doing so can be one of an entrepreneur's best investments. How about you? Is your life raft in place and well-equipped?

Although we do not provide tax or legal advice, our aim in this document is to help you identify the most important issues and raise the most important questions that are relevant to you. We strongly recommend you then discuss these with your external tax and legal advisors, taking account of your personal circumstances.

## **Corporate structure**

A streamlined and optimized corporate structure is usually the cornerstone of a successful business. That is, as long as it adequately reflects current needs and geographical footprint, while being subject to regular reviews to flawlessly accommodate future growth plans and strategies.

The shape, activity, and location of entities involved are only some of the key aspects to consider. Would a partnership be more efficient than a limited liability company? Is there a need for a specific type of activity, like management, financing, or research and development services that should be sheltered under a different entity? Would a family office work in my case? Where should such an entity be based? Are talent pools and professional networks locally available? How can my family have easy access to liquidity if and when needed?

## **Asset and family protection**

Establishing an appropriate structure means your assets, both business and private, are also adequately protected. We often see that an entrepreneur's private wealth is tied up in their company. It is therefore open to potential corporate creditors' claims, and exposed to geopolitical turmoil, operational disruptions, market fluctuations, and other risks that would otherwise only affect the business. Clearly segregating company from private wealth under an appropriate set-up may be something to consider, although there may be structural and fiscal hurdles to clear. Depending on the country you and your family live in, common solutions like a life insurance policy, trusts, or other asset-owning entities could deliver the degree of protection you are looking for. Family protection and wealth preservation from disruptive events (e.g., illness, incapacity, or death) can also be ensured

with the aid of specific tools. A life insurance policy, for instance, could provide an entrepreneur's family with the necessary liquidity for dealing with tax liabilities unaccounted for when the entrepreneur was still alive, or for buying out a business partner.

Similarly, tools and documents like a marriage contract, a shareholders' agreement, an advance directive, or a simple power of attorney can be helpful in protecting a family's interests from unexpected events, but even more so in terms of preserving the company's very existence and continuity.

### Business continuity and succession

Having one or more of these contingencies in place will help the business to run smoothly and efficiently, while preventing potential conflicts between business partners and heirs.

Though, for such documents to be most effective, they would need to be part of a well thought out business succession plan. Amid the greatest wealth transfer in history, studies show that a little more than 50% of business owners seem to have a succession plan in place<sup>1</sup>, while only 12% of family businesses are expected to survive through to the third generation<sup>2</sup>. There is little doubt this is partly due to succession planning being a lengthy, multidisciplinary process, and not one quick decision.

Whether the plan is to transfer the business to the next generation, or to exit through selling the company in the public markets or privately to a competitor, financial investor, or family office, it requires transparent and open communication with all family members and stakeholders; an accurate valuation of the business and the company assets; adequate preparation and education of the future leaders, and a realistic allocation of operational and non-operational roles; detailed analysis of all tax and legal parameters at stake; setting up the right structures and entities (e.g., trust, private holding companies); and a fair distribution of the inheritance. And this is to name only a few.

### Tax, legal, and regulatory aspects

The applicable tax, and legal rules and regulations are a common denominator in all of an entrepreneur's key needs and challenges. Particularly in situations with an international footprint, which require the coordination of more than one tax and legal framework.

These aspects will determine the legal form of the entity, the way it is run daily, the form any possible restructuring can take, and the procedures that will need to be followed (e.g., cross-border merger, spinoff, establishment of a subsidiary). They also determine the tools and solutions available for protecting the family and the business from disruptive events. They determine the tax liabilities weighing on the business,

when profits are realized and distributed, new entities and structures are implemented and activities undertaken, or business assets passed on by way of sale, gift, or inheritance. They impose notification or licensing requirements, or shape a business's objective by setting respective restrictions and fines.

### Network, network, network...

"I note all these, but what have my peers done in a situation like mine?" This is a very common and fair question we hear a lot. Theoretical scenarios and rules are valuable, but has anyone taken these specific steps and has this worked for them? In the end, it all comes down to the planning and the implementation. If another entrepreneur has faced the same challenges and successfully (or not!) adopted a solution, it is a good source of information or even inspiration.

Sharing ideas and practical experiences can sometimes be eye-opening. Having access to the correct people and networks is the key to this valuable thought exchange.

### How UBS can help

All key challenges and respective responses are closely intertwined. A holistic and structured approach would certainly prove more appropriate for building a sense of safety against the unknown. Bluntly, as Peter Drucker, American economist and father of modern management, said, "the only way to predict the future is to create it." True long-term success can be achieved through our full My Life offering:



1. **My Family**, the best way to ensure the people closest to you are well off
2. **My Protection**, security from multiple risk factors and disruptive events
3. **My Company**, a proven strategy to ensure business success
4. **My Taxes**, factoring the tax aspects in your decisions
5. **My Retirement**, this well-earned time deserves the best planning
6. **My Succession**, setting the path for your assets and values beyond your lifetime

There may be several options available to you. At UBS Wealth Planning, we can discuss these to identify your specific circumstances and personal preferences that you can then follow up with your own tax or legal advisor. Please note that UBS does not provide legal or tax advice.

For further information, please contact your UBS Client Advisor, who will be happy to put you in touch with our specialists in UBS Wealth Planning.

<sup>1</sup> UBS Investor Watch, October 2022

<sup>2</sup> Deloitte, "Business succession planning. Cultivating enduring value" 2013

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This summary is based on the provisions of the Income Tax Act (Canada) (the "Tax Act") and its regulations which are in force or have effect as of the date hereof. UBS assumes no liability to update or revise the below summary, and it should not be relied upon by investors to make investment decisions. The below summary of certain Canadian federal income tax considerations is limited to a nonexhaustive set of tax rules that could result in a tax liability to an investor that is resident of Canada for purposes of the Tax Act and that is investing in securities of a "non-resident" (as defined in the Tax Act) issuer even if the investor does not earn or receive any amounts from such investment.

The Tax Act includes rules (the "Offshore Investment Rules") that may require an amount to be included in the income of an investor that holds an "offshore investment fund property". The Offshore Investment Rules may apply where (i) an offshore investment fund property derives its value primarily from "portfolio investments" in certain assets, and (ii) it may reasonably be concluded that one of the main reasons for the investment is to derive a benefit from portfolio investments in these assets in such a manner that taxes on the income, profits and gains from the assets are significantly less than the tax applicable under the Tax Act if such income, profits and gains had been earned directly by the investor.

If the Offshore Investment Rules apply, the investor will have an income inclusion in respect of each month equal to the "designated cost" of the property to the investor that is subject to the rules at the end of the month multiplied by 1/12th of the sum of a prescribed rate of interest plus 2 %. The prescribed rate of interest is linked to the yield on 90-day Government of Canada Treasury Bills and is adjusted quarterly. The income inclusion will be reduced by the investor's income for the year (other than capital gains) from the offshore investment fund property determined under the other provisions of the Tax Act. Accordingly, if the Offshore Investment Rules apply to an investor, the investor may be required to include in taxable income amounts that the investor has not earned or received. These rules are complex and their application depends, to a large extent, on the reasons of an investor for acquiring or holding the investment. The foregoing summary provides a general description of the Offshore Investment Rules, and should not be construed as advice to any particular investor regarding the implications of the Offshore Investment Rules in the investor's particular circumstances. Investors are urged to consult their own tax advisors regarding the application and impact of the Offshore Investment Rules in their particular circumstances.

The rules in respect of non-resident trusts will not apply in respect of "exempt foreign trusts" (as defined in the Tax Act), which would, subject to detailed provisions, generally include commercial trusts. Where, however, a non-resident trust is an exempt foreign trust because it is a commercial trust, an investor (x) that holds, either alone or together with (i) any persons not dealing at arm's length with the investor or (ii) any persons who acquired their interest in the trust in exchange for consideration given to the trust by the investor, at least a 10% interest (as defined and determined based on fair market value) in such trust, or (y) that has contributed "restricted property" (as defined in the Tax Act) to such trust, will be required to include in income a percentage of that trust's "foreign accrual property income" (as defined in the Tax Act). Other investors in a commercial trust may be subject to the Offshore Investment Rules discussed above. Investors should consult their own tax advisors in this regard.

If the total "equity percentage" (as defined in the Tax Act) of a Canadian investor (and related persons) is 10% or more in a particular non-resident corporation, the investor may be subject to the rules in the Tax Act which (i) require the inclusion of a percentage of the foreign accrual property income of the corporation in computing the income of the investor, rather than the application of the Offshore Investment Rules, and (ii) could result in withholding tax being due by an investor that is a corporation resident in Canada for purposes of the Tax Act. Investors should consult their own tax advisors in this regard.

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