



Estate Freezes – The Basics

IN THIS ISSUE

What is an estate freeze?
 Why is an estate freeze implemented?
 Income splitting
 Creditor protection
 Probate planning
 Marital considerations
 Incorporation tax benefits

What is an estate freeze?

An estate freeze refers to the transfer of the future growth in value of a business, investments, or other assets into the hands of subsequent generations (the “Children”). The current owners (the “Parents”) are effectively divested of this future growth. An estate freeze typically limits the value of the Parents’ estate to the value at the date the freeze is implemented (the freeze typically retains the current value of the asset, although often in a different form). Accordingly, capital gains and other tax exposure on the future growth that would otherwise arise when the assets pass from Parents to Children are avoided.

Why is an estate freeze implemented?

The main reason to implement a freeze is to maximize the value of the estate that will ultimately pass to the freezeor’s beneficiaries.

An individual is generally considered to dispose of his or her capital

property, on death, at fair market values. Reducing the value of one’s property that will be subject to these “deemed disposition” rules serves to maximize the value of the assets received by the beneficiaries.

For this reason, an estate freeze is implemented when the assets of the freezeor are expected to appreciate. The avoidance of capital gains and other tax that would otherwise be incurred on the transfer of appreciated assets to a subsequent generation means that the beneficiaries will receive more (and the Canada Revenue Agency less). If the assets are expected to depreciate, it is usually preferable not to implement an estate freeze.

In addition to avoiding capital gains tax upon the death of the Parent, an estate freeze may serve a number of other purposes, which are listed below.

Income splitting

Income and capital gains might be taxed in the hands of family members who are in a lower marginal tax rate than that of the Parents. There are a number of income tax rules (the “attribution rules”) that are designed to thwart this objective. It is, however, quite possible to implement successful income-splitting strategies within the context of a freeze, notwithstanding these rules. In the corporate context, income-splitting also refers to the ability to have corporate distributions, as well as gains from the sale of shares themselves, taxed in the hands of lower-bracket family members. In the latter case, multiple recourses to the enhanced (\$750,000) lifetime capital gains exemption may also be an objective of the freeze.

