SUCCESSION PLANNING

Presented by: Tony Fittler

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What I will be talking about

- Roadblocks to succession planning
- Case study using a discretionary trust
- What can go wrong
- Planning to avoid issues

After my presentation

- Paul Lucas will present on succession planning issues including a case study
- Then we will have a question time for succession planning issues and comments

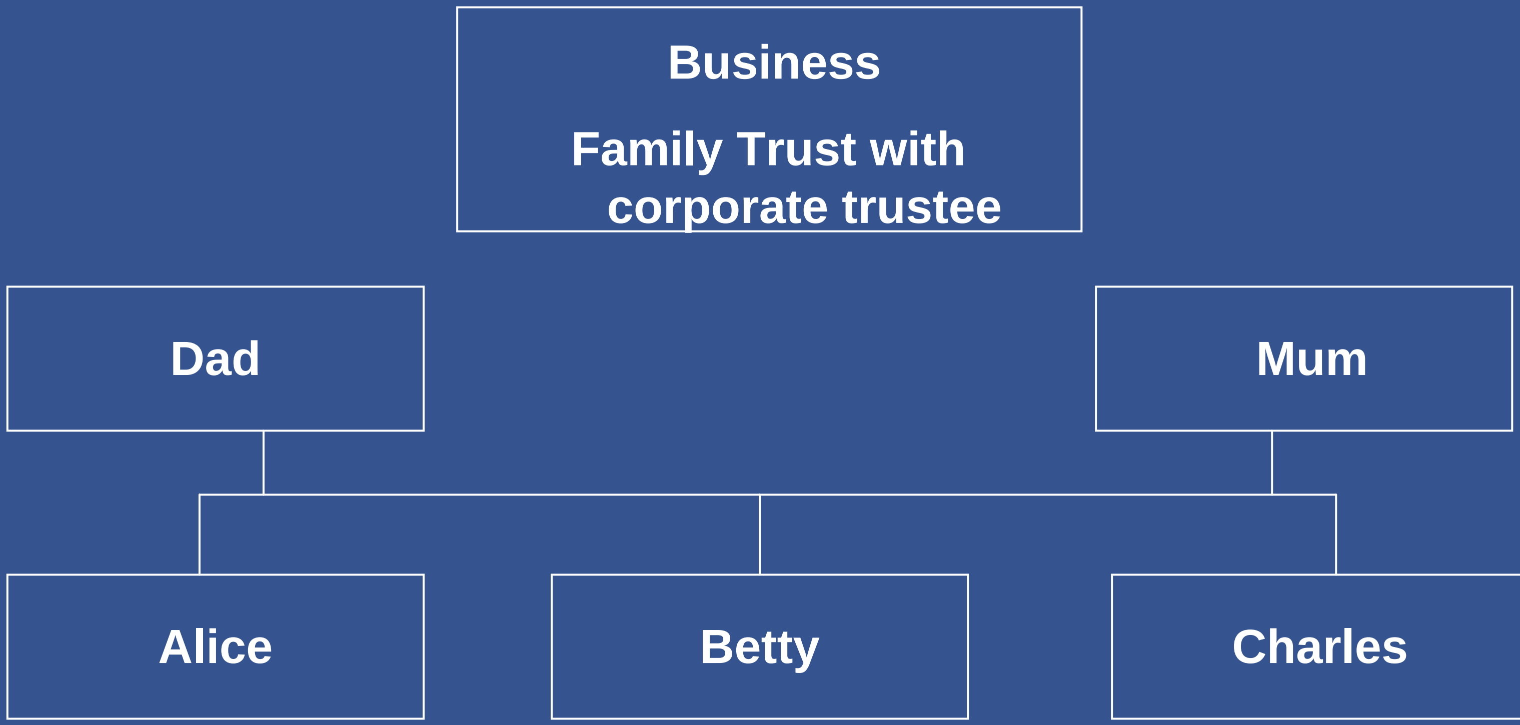
Roadblocks to Succession Planning

- Fear of change
- Fear of losing control
- Fear of failure
- Lack of catalyst
- Legal difficulties
- Tax & stamp duty

Case Study

- Using a discretionary trust to own a small business is very common due to its flexibility and tax advantages (including access to the Small Business CGT concessions)
- Our case study involves a discretionary trust with a corporate trustee.

Case Study


Business
Family Trust with corporate trustee
Dad
Mum
Alice
Betty
Charles

Case Study

- Mum & Dad want Alice to run the business
- Betty is in the process of divorce
- Charles is a ‘professional’ punter
- Charles and Betty are not interested in the business but resent Alice’s involvement

What can go wrong?

- Mum and Dad do not own the business, the family trust does and it is controlled by the corporate trustee
- The family trust may have an appointor or guardian who can remove the trustee
- Ownership of the corporate trustee and the person who is the appointor will effect succession planning
- The decision to leave the business to one child or another is not effective unless implemented by the trustee

What can go wrong?

- If Alice does not control the trustee, she does not control the business
- If all three children have equal interests in the trustee, Betty and Charles can stop Alice having an involvement in the business (subject to the appointor removing the trustee)
- If Alice controls the trustee, she can decide not to make any distributions to other beneficiaries
- If one parent controls the trustee, they can exclude any one or all of the children

What can go wrong?

- Changing the trust deed to give certainty can trigger tax and stamp duty (if it amounts to a resettlement - see Buckle's case)
- Estate planning may be misunderstood ie leaving shares in trustee company inappropriately or ignoring beneficiary 'loan' accounts

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What can go wrong?

- No planning undertaken in relation to Small Business Capital Gains Tax concessions (see handouts)
- Family Trust tax elections not made
- Trust deed not consistent with commercial agreements

Planning to avoid issues

- Ensure you understand your business structure and the legal rights and obligations of the structure
- Know who controls your structure
- Understand the benefits and disadvantages of your structure from a succession planning perspective

Planning to avoid issues

- Make sure you get advice
- Check to ensure that you are taking advantage of the small business capital gains tax concessions
- Consider whether non-business assets can be held in another structure
- Know the value of the business (and understand it will change over time)

Planning to avoid issues

- Consider the appointment of a trusted adviser to ensure that your wishes are implemented
- Take action while you are still in control (quite often outcomes that are not strictly in accordance with legal principles can be achieved by dominant controller)

Planning to avoid issues

- Communication - consider being open about values with the family - manage expectations
- Have an communicated exit plan – it may change but having a plan often allows people to evaluate what they really want?

Your Succession Plan

- Good luck with your succession planning
- Hope you can avoid the problems that Paul and I have covered today