

WHY IS ASSET PROTECTION MORE IMPORTANT THAN TAX BENEFITS?

This is a great question, and one that is often not considered.

An important point to note is that generally, when choosing which legal and tax structures to use, you can either have asset protection or tax benefits. It's very rare that you can get both at the same time. An even more important point to note is that in choosing asset protection first, you are generally only deferring the tax benefits to a later date, you're not foregoing them.

Tax benefits reduce our tax to pay, which means we have more cash in our pocket. However, that is thinking more about today and not what might be better for us in the long run. In order to create long term sustainable wealth, you need a strong foundation, just like building a house. If the house foundations are weak, sooner or later, costly remedial work will be needed to make things right. Choosing your tax and legal structures is no different. In my experience, people who choose tax benefits as their priority generally end up wishing they had chosen to go down the asset protection track in the first place.

Asset protection is about looking to the future first, which means that you need to have an idea of where you're going and what you will do to get there. Where tax benefits are your starting point, the focus is on today, and it does not necessarily take into account what the plans for the future are.

Here are some of the things to consider when deciding which path to choose:

- There are four 'legal' structures available to choose from:
 - sole trader - you own the asset or operate the business in your personal name, which leaves you with unlimited liability
 - partnership – where you own an asset or business with another person or persons, gives you unlimited liability for not only yourself, but your partner/s
 - company – the company owns the asset or business and creates an entity separate to yourself, thereby limiting your personal liability
 - trust – the trust owns the asset or business, again creating an entity separate to yourself and limiting your personal liability.
- In order to get tax benefits personally means you have to own assets directly in your personal name. While you get the tax benefits, you now own an asset that will be increasing in value over time, making that asset vulnerable to claims from third parties, such as life partners or creditors.
- Situations where you may need to consider protecting yourself against include:
 - Relationships – where you have been in a relationship for more than three years, all separately owned property becomes relationship property, which is especially a problem where there is a significant difference in the net worth of each partner
 - Children are just as vulnerable from relationship claims and some forward planning can help protect their inheritance
 - Creditors – while it would never be your intention to not pay your creditors, sometimes circumstances arise that make paying your creditors impossible, in which case, you do not want them to come after you personally, you want them to make a claim against the business
 - Customers – again, with every intention, you want to do your best by your customers, yet sometimes unintentional mistakes are made that can cause your customers to suffer a loss, and you would want them to make a claim against your business, not you personally
 - Aged care subsidies – at present, aged care subsidies are asset tested, and the asset levels are relatively low. Unless you want to be forced to sell your assets when old age comes, you will want to look into how you can protect your assets for yourself, your partner and your children.

- Capital gains tax and estate duty – at the moment, neither of these exist in New Zealand, but that is not to say that future governments won't introduce legislation to bring these back at a later date.

By spending some time with a structuring specialist, and understanding the pros and cons of each structure, you are then able to make an informed decision as to which structure will best suit your particular circumstances. Whatever you choose, it should be flexible enough to change and adapt as you, your plans and circumstances change.