

TYPES OF BUSINESS SUCCESSION AGREEMENT

In general, there are now two alternative types of Business Succession Agreement:

- Self-Ownership Agreements; and
- Trust Ownership Agreements.

The type of Agreement reflects the ownership of the Buy/Sell Policies. However, it also has implications for the scope of the Succession Plan and the ownership of other Business Insurance (such as Debt Reduction and Key Person Insurance).

Self-Ownership Agreement

A Self-Ownership Agreement requires each person to own their own Buy/Sell Policy.

This legitimately avoids CGT on the insurance proceeds (not the Sale Price of the Equity) in all of the events that might give rise to a claim under the Policy.

Because the Life Insured owns the Policy, the Insurance Proceeds attributable to the Purchase Price must be paid to the Life Insured or their Estate, even if they own the Equity in the Business through a Company or Family Trust.

In addition, it is normal for the Policy to fund only the Purchase Price of your Equity in the Business.

If other Business or Personal Insurance is required:

- this cover would normally be included on separate Policies for each Life Insured (“**the Multiple Policy Strategy**”); and
- the Self-Ownership Agreement would not normally deal with the commercial, legal and tax implications of this cover (including Key Person Insurance).

As a result, there is a risk that the CGT implications of the ownership and other arrangements with respect to this cover might not be adequately addressed by a Legal Agreement.

Trust Ownership Agreement

A Trust Ownership Agreement requires each Policy to be owned by a Trustee on behalf of the relevant Life Insured.

Because the Life Insured is the beneficial owner of the Policy:

- the Business Insurance Trust Agreement used by IGS legitimately avoids CGT on the insurance proceeds (not the Sale Price of the Equity) in all of the events that might give rise to a claim under the Policy; and
- The Life Insured can direct the Trustee to pay:
 - ✓ the **Purchase Price** to the appropriate Vendor (including a company or family trust);
 - ✓ any **Debt Reduction Cover** to the appropriate Creditor;
 - ✓ any other **Key Person Cover** to the Business or the Continuing Proprietors; and
 - ✓ any **Personal Cover** to the Life Insured, their Estate, a Nominated Recipient or a Self-Managed Superannuation Fund.

In addition, instead of having separate Policies for Buy/Sell Insurance, Key Person Insurance and Personal Insurance, a Trust Ownership Agreement is the most appropriate vehicle to aggregate different cover onto one Policy (the “One Policy Strategy”).

A Trust Ownership Agreement also ensures that the CGT implications with respect to every component of the Policy are adequately addressed by a legal agreement.

The Business Insurance Trust Agreement used by IGS has been approved by the CGT Cell of the ATO.

BENEFITS OF IGS BUSINESS INSURANCE TRUST AGREEMENT

The IGS Business Insurance Trust Agreement is a unique Agreement that:

Simple

- is the legal and tax foundation of a One-Page Succession Plan;
- helps business people to see the Big Picture on one worksheet;
- allows all Business and Personal Insurance Cover to be included on One Policy held by just One Owner for each Life Insured (rather than Multiple Policies owned by Multiple Owners);

Comprehensive

- enables a Business to combine Asset (Purchase Price), Liability (Key Person) and Personal Needs/Cover on one Policy for each Life Insured;
- allows Personal and Self-Managed Superannuation Fund-owned Cover to be held on one Policy;
- allows the legal strategy to become secondary to the commercial and insurance strategy of the Succession Plan;

Flexible

- can place a “Roof” over one new Policy or a number of existing Policies;
- creates an “Insurance Facility” within which Cover can be re-allocated within the Policy as individual needs change;
- allows future increases in the Purchase Price to be funded by Insurance Cover that was previously allocated to other needs that might have reduced (such as Debt Reduction or Personal Cover);
- maximises Future Insurability of the Purchase Price;

Secure

- is a “Legal Engine” that securely drives all components of the Policy to the appropriate Recipient;
- places a “Roof of Security” over the Insurance Cover that minimises the risk of default;

Tax-effective

- has obtained a positive opinion from the CGT Cell of the ATO;
- solves all relevant insurance ownership and tax issues;
- addresses tax issues with respect to the payment of the insurance proceeds by the Insurance Company to the Policy Owner or Beneficial Owner of the Policy;
- addresses tax issues with respect to payments to the appropriate Recipients;

Cost-effective

- reduces Policy Application Fees;
- maximises Volume Discounts with respect to the Premiums;
- provides greater protection for a comparable legal fee.

ALTERNATIVE BUSINESS SUCCESSION AGREEMENTS

Business Insurance Trust Agreement (Single Policy Owner)

This Agreement allows all Business and Personal Cover to be included on one Policy with respect to each Life Insured.

It deals with all Cover (including Debt Reduction and Key Person Capital Cover) securely and tax-effectively.

One or more existing Self-Owned Policies can be transferred or “parked” under the roof of the Trust, if there are health issues with respect to any of the Lives Insured.

In these cases, the Life Insured continues to be the “original beneficial owner” of the Policy for CGT purposes and there is no CGT liability with respect to the Insurance Proceeds on a claim.

The Trustee is usually the Business itself or one of the entities within the business structure (preferably a company).

Under the Trust Structure, the Business does not hold the Policy or the Insurance Proceeds for its own benefit.

The Insurance Proceeds are not available to a creditor of the Business while it holds them in its capacity as the Policy Owner or Trustee.

Instead, the Business holds the Insurance Proceeds on the trusts set out in the Trust Agreement and must distribute them to the Recipients nominated in the Agreement.

Hybrid Insurance Trust Agreement (Multiple Policy-Owner)

In some cases, the Business might wish to obtain the benefit of a "One Page Succession Plan". However, the Lives Insured may require some of the Buy/Sell or Personal Cover to be owned by a Public Offer Super Fund, where considered appropriate by the Adviser and Business.

Alternatively, they might require the Buy/Sell or Personal Cover to be owned by a Related Party of each Life Insured and the Debt Reduction or Key Person Cover to be owned by the Business.

In these cases, the Hybrid Insurance Trust Agreement can be used to document a “One Page, Two Policy Succession Plan”.

It enables the cover for each Life Insured to be split between two or more separate Policies owned by different parties:

- the Purchase Price and/or Personal Cover might be owned by the Life Insured or a Related Party (or a Super Fund, where appropriate); and
- the Debt Reduction and Key Person Cover might be owned by the Business (on the terms of the current tax-effective Trust Structure).

Self-Ownership Business Succession Agreement

This is a more traditional Buy/Sell Agreement which:

- does not utilise the unique Trust Structure developed by IGS;
- deals only with the Buy/Sell or Equity Insurance Cover;
- requires the Buy/Sell or Equity Insurance Cover to be written on a separate Policy to any other Business or Personal Cover;
- requires the Life Insured to own the Policy;
- pays the Buy/Sell or Equity Insurance proceeds to the Life Insured (or their Estate), regardless of whether they are the actual owners of the Equity;
- might leave the actual owner of the Equity with an un-funded CGT liability;
- does not deal with any Debt Reduction or Key Person Capital Cover required by the parties; and
- leaves all other cover to be dealt with outside the framework of an Agreement.