BCE LIMITED TALKS ABOUT ASSET AND ENTITY PROTECTION

Business owners work hard to accumulate personal wealth. The protection of that wealth must be a priority. Asset protection planning allows business owners to protect themselves from the claims of unsecured creditors such as those who may bring suit against their business. The failure to plan can result in the loss of both business and personal assets. Knowing the risks and how to minimize them is a strategic discussion that all business owners must engage in with their attorney and insurance agent.

For those with closely-held family businesses, the primary objective is to shield personal assets from the reach of company creditors. This is done by making sure that insurance coverage is adequate and creating special purpose entities to hold specific business assets. The selection of the appropriate entity to hold such business assets depends on both the risk environment and the income tax consequences.

Here is a brief overview of the various types of entities available:

- Sole Proprietorship – you have no limit on personal liability. Net income is taxed on the personal return of the owner.
- General Partnership – you may be personally liable for partnership debts even if they arise from the actions of one of your partners. Net income is passed out and taxed on the personal returns of the partners.
- Limited Partnership – a limited partner is generally liable only to the extent of his or her equity in the partnership. To achieve this level of protection, the limited partner must not take an active role in management. A general partner in a limited partnership is generally exposed to the same liability as a partner in a general partnership. Net income is passed out and taxed on the personal returns of the partners.
- Corporation or Limited Liability Company (LLC) – protects personal assets from the claims of business creditors. Generally, creditor claims are limited to the assets held by the corporation or LLC. For regular corporations (C corporations), net income is taxed at the entity level. For S corporations and most LLCs, net income is passed out and taxed on the personal returns of the shareholders or members.

LLCs have become the entity of choice in recent years because they offer both the limited liability protection of corporations, and maximum flexibility for income tax purposes. An LLC may be taxed as a sole proprietorship, a partnership or a corporation.

A major part of asset protection planning involves deciding which assets to hold in which entity. One of the most common arrangements is to hold business real estate in a separate entity from the operating company. In this scenario, the real estate would be leased back to the operating company. Should the operating company fail or be successfully sued beyond its insurance limits, the real estate would generally be outside the reach of unsecured creditors. Another variation of this arrangement would be for a separate entity to hold the equipment and vehicles used in a business, and lease them back to the operating company.

When creating a separate entity, it's vital to maintain separate books and records and to observe legal formalities such as holding and documenting corporate meetings and the election of officers.

Business owners must be proactive in assessing their risks, obtaining appropriate insurance coverage and creating special purpose entities to protect their valuable, hard-earned assets. BCE Limited can assist you with the crucial and often overlooked task of asset protection planning.