Advantages to Business Entity Ownership of Property

The use of business entities (*e.g.,* corporations, LLCs, LLPs, and limited partnerships) to hold and operate property has significant benefits for both U.S. and non-citizens. Owning and operating property investments through one or more business entities is generally more advantageous than direct personal ownership of the property. Limited liability protection is often the most cited advantage. Debts arising out of the use of or occurrences on property owned by individuals who are not operating under the umbrella of a business entity could – if imposed on the owners personally -- have a devastating effect on the owners for many years. Use of a business entity for personal liability protection is no substitute for liability insurance, however. The "cost of defense" (*i.e.,* cost of lawyers) most insurance policies provide in the event the owners are sued is well worth the premium the owners pay for liability insurance coverage.

There are several advantages of owning and operating property through a business entity, however, that go well beyond limited personal liability protection. Formation of business entities for ownership of real property is one of the most common tools used by lawyers, accountants and other professionals to minimize the effect of the estate tax. This tool is particularly important for non-U.S. citizens who own U.S. property. The non-U.S. citizen does not have to have an operating "business" in order to take advantage of these business entity ownership benefits. A business entity can be used simply to own or hold title to U.S. property.

As discussed in a previous article, the estate tax exemption amount for non-U.S. citizens is extremely low. A non-U.S. citizen's ownership of U.S. property with significant value (above $60,000) may expose that non-citizen to imposition of the estate tax upon the owner's death. Use of a business entity, which might or might not own the property directly, combined with proper succession planning, can minimize imposition or the amount of any estate tax. The non-citizen may be able to entirely avoid imposition of the estate tax, and possibly eliminate the need for any probate in the United States, under certain circumstances. This same technique is often also used to minimize or avoid estate tax for high net worth U.S. citizens.

Business entities also better facilitate the ability to properly control and manage property when there are multiple owners. If the property is owned outright by several persons, each owner (either intentionally, or through circumstances unintentionally imposed on that owner) has the ability to negatively affect the property and the other owners. The owners may agree as among themselves that only one or two owners have the authority to manage or encumber the property. But that will not stop the non-authorized owner (or his circumstances) from encumbering the property or affecting the other owners. It will simply give the other owners a claim (*i.e.,* probably a lawsuit) against

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the unauthorized owner whose actions or circumstances resulted in a loss to the other owners.

In contrast, business entity ownership imposes a structure upon the owners that can prevent a non-authorized owner – or his circumstances – from encumbering the property or adversely affecting the other owners. With a business entity owner in place, third parties dealing with the property must deal with only an authorized person (*e.g.,* an authorized officer or manager) of the business entity. That person's personal circumstances and debts generally will not be imposed on the other owners or the property owned by the business entity.

This business entity structure also facilitates passive investment by persons who will not be actively involved in the operation of the property. Control and management can be kept in the hands of certain owners, while still allowing others to share in the profits. This can facilitate a managing owner's autonomy in the operation of the property, undisturbed by an owner with limited knowledge of the property or the business being conducted on it.

Estate planners use this advantage of business entity ownership to facilitate moving the "value" of property to children or others during an owner's lifetime, thereby decreasing the size of the owner's estate upon death. This results in a concomitant decrease in the amount of the estate tax, and may eliminate it altogether. At the same time, through, *e.g.,* voting trusts or designation of management powers in the business entity, the original owner can maintain the ability to control the property during his lifetime.

The use of business entities to own property has several advantages over individual ownership. Centralized control and tax benefits are but a few of the advantages that – with proper advice from your legal and tax professionals – you can realize. You owe it to yourself and your family to explore the options and benefits available to you. ©