Business Succession and Inheritance Planning

Business Property Relief and your Will

Introduction

If you own a business or are a partner or shareholder in a business, it is important to consider what will happen to that business after your death.

This includes Shareholders' Agreements or Cross Option Agreements (giving business partners or co-shareholders first refusal to purchase your shares), Shareholder Protection (paying a lump sum to enable business partners / co-shareholders to purchase your interests) and your Will.

If you are the sole proprietor of a business you will need to consider whether it should continue after your death and, if so, will your family have the skills to continue it.

The company's incorporation documents should be drafted in a way to maximise tax reliefs and allow for inheritance tax planning where appropriate.

Inheritance Tax ("IHT") and Your Business

Some business assets are entitled to relief from IHT on death (or transfer during life). This relief from IHT is known as Business Property Relief ("BPR") and provides up to 100% relief on the value of the property of business up to £2.5million and 50% relief thereafter. Other Business may not receive the 100% relief on the first £2.5million but are entitled to 50% relief on the full value.

To qualify the property or business must have been owned for at least two years continuously prior to death (or transfer during life).

BPR at 100% on the first £2.5 million and 50% thereafter is available on:

- Sole trader businesses
- An interest in a business (such as a partner)
- Shares in an unlisted company

BPR is limited to 50% on the full value:

- Shares controlling more than 50% of the voting rights in a listed company
- Land, buildings, plant and machinery used wholly or mainly in the business or partnership or company.
- Unquoted shares and shares traded on the Unlisted Share Market ("USM") or the Alternative Investment Market ("AIM")

BPR is not available if:

- The company or business is wholly or mainly engaged in dealing with securities, stocks or shares, land or buildings, or in making or holding of investments
- The business is not carried out for gain
- The business (or shares in the company) is subject to a contract for sale. This includes passing business assets to personal representatives who are obliged to sell them to surviving partners.

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Business Planning and Your Will

If you own business assets, it's essential to get specialist advice to ensure you have a well drafted tax efficient Will that protects your business and provides clarity for your family and colleagues.

Subject to any existing shareholder or cross-option agreements, your Will should give your Trustees the power to continue running your business on behalf of your family. Selecting the right Trustees is crucial. Trustees responsible for business decisions may include business partners, co-shareholders, accountants, or solicitors with relevant experience.

Note: the trustees you choose for running your business do not have to be the same as those chosen for administering the rest of your estate.

Inheritance Planning

If Business Property Relief (BPR) applies to your business assets, it is important to use this relief effectively.

Spousal Exemption

Assets passing to a spouse or civil partner are free from Inheritance Tax (IHT). This means BPR is not required on the first death and can instead be used on the second death—provided the surviving spouse still owns the qualifying business asset.
However, leaving business assets outright to a spouse can create risks:

- It may increase the size of the surviving spouse's estate, potentially reducing other IHT reliefs.
- If the business asset is sold before their death, BPR will be lost and IHT may be payable at full rates.

Using a BPR (Discretionary) Trust

To avoid these issues, you may choose in your Will to leave the business asset to a BPR discretionary trust instead of directly to your spouse.
Benefits include:

- The asset sits outside the surviving spouse's estate for IHT purposes.
- Trustees can provide income to beneficiaries (including your spouse) sell the business asset if needed and distribute or lend funds flexibly.
- This approach can also be appropriate where beneficiaries are not exempt from IHT.

The trust is a separate entity, with income taxed at the higher rate. However, investments can be structured to minimise income, or income can be distributed to lower/no-tax beneficiaries to reclaim tax. Also, every 10 years, a maximum IHT charge of 6% will apply.

Assets Over £2.5 Million

If the business asset exceeds £2.5 million you may wish to consider how much is placed into trust on death. Any value over £2.5 million passed to a BPR trust may attract IHT at 20% (50% of the current 40% IHT rate on first death. To manage this, you could limit the trust to £2.5 million and pass the remainder directly to your spouse who will benefit from spousal exemption, noting that it may incur 40% IHT on second death if BPR no longer applies.

When considering business succession, it's important that you seek additional tax and financial advice to ensure that your Will is aligned with your overall planning.