



How Do I, as a business owner, address Inheritance Tax?

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As a business owner, have you considered the position, regarding Inheritance Tax, in the event of the death before retirement of a director, partner or shareholder?

Broadly speaking, Inheritance Tax (IHT) is a tax charged at 40 per cent on the value of an individual's estate on death. IHT can also be charged on the value of property held in a trust, in certain circumstances. IHT is also charged at 20 per cent on some lifetime gifts.

There are many different reliefs and exemptions from IHT; most people are aware that transfers between spouses or civil partners are generally exempt, both during lifetime and on death.

Transfers during lifetime to other individuals are **potentially** exempt, which means that IHT may become chargeable if the transferor does not survive for 7 years from the date of the transfer, but otherwise the transfer will be fully exempt.

From a business perspective, the main relief is Business Property Relief (BPR) for business assets.

PLANNING – THE BASICS

The most basic and essential requirement, especially for those in business, is to make a will. If a person dies intestate (without having made a will), the law specifies how their assets are to be dealt with. This can cause great difficulties for surviving family members. Where shares or other business assets are held, it can also affect business partners, directors, other shareholders and the business itself.

In addition to making a will, business partners and shareholders may also need to make other arrangements to deal with their partnership interest or shares.

The main issues with regard to business assets are the continuity of the business and the need to ensure that full advantage is taken of BPR and APR.

BUSINESS CONTINUITY AND SUCCESSION

The most straightforward situation is that of a family-owned business, where it is intended that another family member will take over the running of the business. Here, it will normally be sufficient simply for the will to specify to whom the shares or other business assets are to be transferred, and to ensure that BPR is maximised.

Where the individual is in a partnership, or is a shareholder in a company, with other partners or shareholders who are not family members, additional arrangements will need to be made.

The Articles of Association of most private companies include 'pre-emption rights', which provide that shares must first be offered to existing shareholders before they are sold to a third party. This will enable other shareholders to acquire shares from the personal representatives of a deceased shareholder.

More specifically, a separate Shareholders' Agreement can set out the exact wishes of all shareholders with regard to matters such as the purchasers of any shares that become available; a formula for arriving at the purchase price; and how a purchase will be funded.

MAKING THE MOST OF BUSINESS PROPERTY RELIEF

BPR is available for business assets that have been owned for at least 2 years, and is very valuable – the relief (either on a lifetime transfer or on death) is:

100 per cent of the value of an unincorporated business; an interest in a partnership; shares in an unquoted company; or securities in an unquoted company controlled by the owner.

50 per cent of the value of shares or securities in a quoted company controlled by the owner; or assets used by a company controlled by the owner or by a partnership in which the owner is a partner.

In addition, BPR is not available on 'excepted assets' that are not used wholly or mainly for the purposes of the business, or that are not required for its future use. This can result in an unexpected loss of BPR where, for example, large cash balances have accumulated.

Another important detail is that generally BPR will not be available for an asset that is subject to a binding contract for sale. Shareholders' Agreements and other similar documents should therefore provide that other shareholders or partners have an option to buy shares or other assets from the personal representatives of a deceased owner, and the personal representatives should have an option to sell to the remaining shareholders or partners.

Where possible, wills should also be structured so that assets which qualify for BPR are left to non-exempt beneficiaries. Otherwise the relief could be wasted.

MORE ADVANCED PLANNING

The introduction in October 2007 of transferable nil rate bands for spouses and civil partners has reduced the need for sophisticated planning in most cases where the value of joint estates is not more than £624,000.

For more substantial estates, significant IHT savings can be achieved by the careful use of available exemptions, including potentially exempt transfers, and normal expenditure out of income, and trusts.

Insurance can also play a part in meeting eventual IHT liabilities, where other measures are not possible or appropriate.

The IHT legislation is still very 'business-friendly', and proper attention and planning can ensure that significant savings can be achieved, and that a distressing time is not made much worse by being unprepared for the financial, taxation and general business consequences of a death.