VealeWasbrough Lawyers

A Family Business

Are you the owner or part owner of a business or family company?

If so, what can you do now to protect your family's inheritance?

There is a window of opportunity now to review your family's holding of business assets whilst we still enjoy a favourable tax regime. We do not of course know what is in the mind of the Chancellor for the future, but the following could be among his targets:

- Increase in the rate of Inheritance Tax
- Reduction or abolition of Business Property Relief
- The loss of the ability to make most lifetime gifts without an immediate tax charge
- Restriction of Holdover Relief

What options are open to you?

You might consider placing a share of your business into a Family Trust.

What does this mean?

Transferring shares or a share in the business to trustees. You can be a trustee, as can your spouse. It is advisable to have a third independent trustee although not essential. The Trustees will hold those shares for the benefit of your family, but you must exclude yourself and your spouse.

What are the advantages of a trust arrangement?

- Estate preservation; by reducing your estate you are reducing your family's future inheritance tax bill
- Asset protection for younger members of the family
- Through your trusteeship you retain control over:
  - Distributions of capital and income among members of your family in the future
  - Appointment and removal of trustees
  - Investment of trust assets if, for example, the assets are converted to cash in the future
  - Votes attaching to trust shares

What sort of trust should you use?

You have the choice of:

- An interest in possession trust
- A discretionary trust
- An accumulation and maintenance trust

The tax treatment of each of these trusts is different. Which form of trust is appropriate to you will depend on your family circumstances and your objectives in setting up the trust.

The most flexible arrangement is a discretionary trust where you provide for a wide class of beneficiaries, normally your children and remoter issue and perhaps spouses, widows and widowers with power to add beneficiaries at a later stage.

What is Business Property Relief (BPR)?

There are three conditions:

- The business must be a qualifying business eg it will not qualify if the business consists wholly or mainly of dealing in land or making or holding investments
- The asset must be relevant business property eg a sole trade or share in a partnership or unquoted shares
- Minimum period of ownership - two years

Where BPR is available, relief at 100% is presently given against Inheritance Tax, and so there would be no charge at all on the transfer into a trust or subsequently. Fifty percent relief is also presently available where land is occupied by the partnership or a controlled company.

What are the Capital Gains Tax implications of making a gift?

In most cases Holdover Relief (ie the right to defer payment of CGT until the trustees ultimately dispose of the settled assets) will be available either because the assets going into the trust are business assets or because you are making a gift to a discretionary trust.

Is there anything else you should be concerned about at this stage?

Do check that the terms of the company's Memorandum and Articles permit a transfer of shares into a family trust. It may be that you have to restrict the beneficiaries to immediate family.

Are there any other matters you should be considering at this stage?

If you haven't made a Will or if you haven't updated your Will for some time do allow us to review this at the same time. A tax efficient flexible Will can save your estate up to £100,000 in Inheritance Tax. You may not be able to rely on your family executing a Deed of Variation with two years of your death to make your Will more tax efficient retrospectively, as you can do now.

For further information please contact Helen Robertson by telephone or at hrobertson@vwl.co.uk.

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