

Estate Planning Tips for Business Owners

Introduction

While many business owners are focused on growing the business, they often neglect to consider what will happen if they are injured in an accident, suffer an illness, or suddenly die. Business owners failing to have an estate plan run the risk of undermining a lifetime of hard work, jeopardizing the livelihood of business associates, and endangering the well-being of loved ones.

Having a Will

A Will is the most basic estate planning document that enables the business owner to specify how their assets will be distributed on death. They can also name personal representatives or executors, who will be responsible for managing and disbursing the personal and business assets according to the business owners wishes.

Unquoted shares in a trading business can enjoy up to 100% relief from Inheritance Tax if they qualify for Business Property Relief (BPR). Business owners should review their Wills to ensure that valuable tax planning opportunities are exploited and potential difficulties are avoided.

For further information see our article "Owner-managed businesses – tax efficient Wills for company directors" or follow the link: <http://www.ts-p.co.uk/news/owner-managed-businesses--tax-efficient-wills-for-company-directors>

Lasting Powers of Attorney (LPAs)

LPAs are an excellent idea for everybody, especially business owners. An LPA

enables the business owner to appoint individuals to manage their financial affairs if they're ever in a position where they are physically or mentally unable to do so. This is particularly important for business owners. Imagine the difficulties that can arise if a business owner can't sign documents or make important decisions about the running of the business?

If a business owner hasn't signed an LPA appointing attorneys a Court application may be necessary, The Court will appoint a Deputy to manage the business owner's affairs. The Deputy won't know and may not agree with the business owner's wishes. This potentially causes conflict with business colleagues and other parties.

Legislation provides that a company director will automatically cease to be a director if they lack the physical or mental capacity to act as a director. However, where the director also holds shares in the business the attorney can potentially act on their behalf to secure the appointment of new directors, enabling the business to continue or be sold.

Lifetime gifts and succession planning

Developments within the business may also suggest that an early review of share ownership is desirable. A trend in the business from trading towards investment may mean that BPR cannot be relied upon as a tax-efficient means of passing capital to younger generations. The same will be true where there is a strong probability that the business will be sold or liquidated before the present owners die.

Where a business owner's children are already involved in the business, there will

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be a requirement for careful succession planning. This means considering what stake the children should ultimately acquire in the business, and the process by which this should happen.

Lifetime gifts, appropriately timed and structured, can enable an important transition to be managed, and give those involved the best chance to lock into the existing, relatively favourable inheritance tax BPR regime.

For further information see our article “Giving away shares in the family business” or follow the link: <http://www.ts-p.co.uk/news/giving-away-shares-in-the-family-company>

Cross-option Agreements

Cross-option agreements can be a lifesaver for inheritance tax BPR. Many company articles and shareholder agreements, or partnership agreements contain pre-emption rights. This is the right for those continuing in the business to buy out the share of a deceased business owner. HMRC’s view is that if there is a cast iron obligation to turn a business interest into money, BPR will not be available. The solution is a cross-option agreement, which contains a right to sell the business to those continuing (or the right for them to buy out a deceased’s share) which only becomes compulsory in nature when exercised.

Business protection insurance

Insurance aims to provide the remaining business owners with tax efficient funding, which they can use to purchase the deceased business owner’s shares or partnership interests. In most cases, where insurance is taken out on the lives of the

business owners, individual policies must then be assigned into a specialist business protection trust. This ensures the proceeds of the policies remain outside the estates of the business owners and sums are freely available to the survivors, if and when needed.

Conclusions

With all the immediate everyday pressures involved in running a business it is hardly surprising if little attention is paid to what would happen if the business owners died or became seriously ill. Nevertheless, it is certainly in the interests of every partnership or private limited company to do so if they wish to ensure the long-term financial security, stability and continuity of their business.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

NOTE: The law is stated as at 1 May 2021

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