Planned Succession
Personal Estate & Business Succession Planning

The Society of Will Writers

Your business could be worth 40% less than you think and other scary things!

Despite the somewhat difficult trading climate over the last few years, many businesses are still making money but, instead of reinvesting or distributing those profits, directors are holding on to the cash. Now there's nothing wrong with putting money aside for a rainy day, the trouble is that by leaving money on deposit the shareholders could be loosing out on Business Property Relief (BPR), which means that their estate will pay 40% in Inheritance Tax (IHT) instead of none.

In a not dissimilar vein, where a business has surplus cash, HMRC may deny a shareholder Entrepreneurs' Relief at the point when they come to sell their shares. This means that Capital Gains Tax (CGT) could be payable at the full rate of 28%. However, by putting the surplus cash to good trading use, the business can restore the availability of Entrepreneurs' Relief to its shareholders, meaning that CGT will only be payable at 10% which represents a significant saving.

Carrying on the theme of HMRC giving you a hard time, if you are a director, and regardless of whether you are also a shareholder, if for any reason the business fails to pay National Insurance Contributions, our friends at HMRC can issue you with a Personal Liability Notice (PLN). The effect of the PLN is dramatic, with liability for the company's unpaid NIC (plus interest and penalties) transferring from the company to you personally and thus falling outside the limited liability criteria. You might say that this is nothing new, but HMRC are actively looking for ways to maximise the tax intake and a hungry wolf is an especially dangerous one.

A million businesses across the UK are now exposing themselves to serious financial risk by not having the legal or financial cover in place to make sure that their business borrowings would be repaid or their share in the business could, when they die, be bought by family or colleagues. That salutary fact still remains true even though the death of a business owner has a greater impact on a business's future than their premises burning down, with over half of business owners ranking the death of an owner as the worst scenario they could experience, saying that the business would either immediately cease trading or do so within the following two years.

Despite that, almost half of UK business owners expect the remaining fellow owners to buy their share of the business in the event of their death, but less than a tenth of UK businesses have a Partnership or Shareholder Agreement and, of those that do, over half have not reviewed them in the last year and more than a third admit that they have never reviewed their Agreements at all. Yet, although four out of five small business owners say they would like to pass on their company shares to specific beneficiaries in the event of them passing away, almost half have yet to put any legal instructions in place to ensure these wishes are honoured.

No doubt you'll agree that there are plenty of more pressing things to worry about, such as closing the next deal or which Merc to buy etc., without delving into the less obvious ways in which you can be tripped up when you're looking the other way. Likewise, you might think that because your lawyer or accountant hasn't already mentioned these horrors that they don't apply to you - if only that were true!

This fact sheet is based on our understanding of current taxation, legislation and HM Revenue & Customs practice as at February 2013, all of which are liable to change without notice. The impact of taxation (and any tax reliefs) will depend upon your individual circumstances.

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