WILLS & YOUR BUSINESS

'Death in Service'

When someone dies, their estate will comprise of anything that they own and these assets will pass to the people entitled under any will or, if there is no will, to the people that are entitled under the rules of intestacy – which will include spouse/civil partner and blood relations.

Where an asset is a family business, it may mean that the person who has died was a sole trader or perhaps a majority shareholder. Perhaps they were in a partnership and on death, this partnership ceases to exist. What happens to the business and its employees? What are the implications?

Some issues to consider are that certain business cannot continue to trade after death – for example if the only person who was able to operate that business at a practical level has died, or, in certain circumstances, if the deceased was the only director and shareholder of a limited company. This could cause a disastrous effect on the value of the business meaning that the beneficiary or beneficiaries you wish to pass the business onto may receive little or no inheritance by the time that the business (which did have significant value) has been wound up and its assets realise.

The people entitled to administer your estate if you do not make a Will are limited by law. These individuals may not understand your business or may not be appropriate because they are too young or perhaps otherwise incapable. They may simply not have the necessary qualification, experience or time available, By making a Will, you can choose appropriate people to make decisions about your business – and these may be different people to those managing your personal affairs.

There are also other things to consider when making a Will and not least what the impact of your business is on your inheritance tax liability.

Inheritance Tax (IHT) and your business

Inheritance Tax (IHT) is payable on death where the value of an estate (including chargeable lifetime gifts) is over £325,000 ('the Nil Rate Band'). Tax is payable on the excess above the Nil Rate Band at 40%. In addition to the Nil Rate Band, for anyone dying after 5th April 2017 who owns a property and leaves their estate to their children or grandchildren "Residence Nil-Rate Band" which is an additional £175,000 per person.

One of the additional exemptions that may be available following death is Business Property Relief (BPR). BPR is available at either 100% or 50% depending on the circumstances of the ownership of business assets and is only available after the business asset has been owned for a two-year period.

6 Queen Square Bristol BS1 4JE
0117 906 9400
hello@gl.law

What qualifies for BPR?

The types of business assets which can qualify for BPR are broadly as follows:

Assets that qualify for 100% BPR

- Property consisting of a business or interest in a business
- Control holdings of unquoted securities in a company
- Unquoted shares in a company

Assets that qualify for 50% BPR

- Control holdings of quoted shares in a company
- Land, buildings, machinery or plant used by a company

Investment businesses

Business Property Relief is not due where the business, or the business carried on by the company, consists wholly or mainly of:

- Dealing in securities, stocks and shares
- Dealing in land or buildings, or
- Making or holding of investments.

These types of businesses are not relevant business property and so do not attract Business Property Relief.

I am selling my business; how might this affect my estate?

As soon as there is a binding contract for sale you are no longer considered (for the purposes of BPR) as owning the business asset being sold. Instead, you are regarded as owning a right to the sale proceeds. These sale proceeds are not generally considered as qualifying assets for the purposes of BPR. This can mean a potentially substantial increase in the potential IHT liability on death.

This could mean that the beneficiaries under a Will might receive less than they may otherwise have done because it is no longer possible to claim BPR. It is therefore important to consider how you mitigate this potential loss. One of the ways to do this is to acquire a replacement business property which can be acquired within three years of sale of the previous business.

Retirement from Bbusiness

For many people – retirement from their business is the goal and, unfortunately, this will often result in the loss of BPR unless advice is taken as to what steps can be taken to mitigate an inheritance tax liability through lifetime tax planning. You may wish to obtain independent financial advice as to appropriate tax mitigation products.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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