Business Property Relief (BPR)

What is it and when does it apply?

Introduction

If you own a business or are a partner or a shareholder in a business it is important to consider what will happen to that business after your death.

This includes: Shareholders' Agreements or Cross Option Agreements (giving business partners or co-shareholders first refusal to purchase your shares), Key Man Insurance (paying a lump sum to enable business partners / co-shareholders to purchase your interests) and your Will.

If you are the sole proprietor of a business you will need to consider whether it should continue after your death and, if so, will your family have the skills to continue it.

The company's incorporation documents should be drafted in a way to maximise tax reliefs and allow for inheritance tax planning where appropriate.

Inheritance Tax ("IHT") and Your Business

Some business assets are not liable to IHT on death (or transfer during life). This relief from IHT is known as Business Property Relief ("BPR") and provides up to 100% relief on the value of the property or business.

To qualify the property or business must have been owned for at least two years continuously prior to death (or transfer during life).

BPR at 100% is available on:

- Sole trader businesses
- An interest in a business (such as a partner)
- Unquoted shares and shares traded on the Unlisted Share Market ("USM") or the Alternative Investment Market ("AIM")
- Unlisted securities which give the owner control of the company.

BPR is limited to 50% on:

- Listed shares which themselves or with other listed shares or securities give control of the company
- Land, buildings, plant and machinery used wholly or mainly in the business or partnership or company.

BPR is not available if:

- The company or business is wholly or mainly engaged in dealing with securities, stocks or shares, land or buildings, or in making or holding of investments
- The business is not carried out for gain
- The business (or shares in the company) is subject to a contract for sale. This includes passing business assets to personal representatives who are obliged to sell them to surviving partners.

Business Planning and Your Will

For anyone with business assets it is essential to seek proper advice to ensure that you have a well drafted, tax efficient Will in place.

Firstly, subject to any shareholder/cross option agreements, your Will should give your Trustees powers to carry on the running of the business on behalf of your family, without owning the financial interest you are leaving for the benefit of your family i.e. the trustees are the legal owners but not the financial beneficiaries. The choice of trustees is very important (and could include business partners, co-shareholders, or accountants or solicitors with suitable business experience).

Note; the trustees you choose for running your business do not have to be the same as those chosen for administering the rest of your estate.

Assuming BPR is available for a business asset, the next step is to make best use of this relief. If the business asset is left to a spouse or civil partner then BPR has been wasted as any transfer to a spouse or civil partner is already fully exempt from IHT. By leaving the business asset directly to your spouse or civil partner you are simply creating a potential IHT exposure on their estate when they die.

An alternative option may be to consider leaving the asset to a discretionary trust in your Will.

The beneficiaries of the trust will be the people you want to benefit from the business asset (usually surviving husband/ wife/civil partner and children/grandchildren). The terms of the trust will allow the trustees to pass on income from the asset to the beneficiaries and to sell the asset and then pass on or lend the proceeds to the beneficiaries.

The benefit to the surviving husband/ wife/civil partner is that they need only draw down income or capital from the proceeds of any sale as and when they need it. This means that on their death any surplus cash still in the trust does not form part of their estate and therefore is not subject to IHT.

In addition, if the intention is for the business to continue trading indefinitely then it may be possible to get a double helping of BPR. To achieve this, the surviving partner will need to buy the shares left to the discretionary trust.

Continual Planning

For most businesses BPR is vital to ensuring their future viability. It is therefore not only paramount that the correct planning is put in place when the company is set up but that it is continued to be reviewed on a regular basis to ensure new business decisions do not compromise this planning.

This document is for information only. If you would have any questions or require any advice regarding your individual circumstances then please feel free to contact us on wills@pavilionrow.com