Succession planning for a family business

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Succession planning for family businesses is an emotive area. It often covers issues that many people do not want to face.

There is the tacit acknowledgement that matters should be addressed but invariably an understandable reluctance to do anything tangible. But the consequences of not doing so can arrive unexpectedly and, when they come, can be unpalatable.

The following points need to be considered in order to manage the challenges that can arise:

Wills

Having an up-to-date will for the business owner is essential. It is important to check that the executors continue to remain appropriate and can still undertake the role. For family companies with multiple shareholders, the shareholdings in place may have changed since the last will was drawn up, and the balance of ownership on death needs to be considered. An ownership structure with competing factions is a major distraction and emotionally draining.

Inheritance Tax ("IHT")

Private company shares qualify for Business Property Relief, which is particularly generous as they can potentially qualify for 100% relief against IHT. It is, however, common to overlook some of the finer points of this relief, such as abnormally large cash balances, or assets not held for the purposes of the business, which can result in an unexpected tax charge. It therefore pays to undertake periodic reviews of the business with this relief in mind.

Trusts

Trusts play a very useful role in succession planning and enable the donor to pass on shares in the private company without incurring a tax liability and while still retaining control of the shares. This is an advantage where the beneficiaries are not in a position, due to age or experience, to own the shares outright. Trusts can also be an extremely tax efficient method of passing wealth to the next generation prior to the disposal of a private company.

Bank mandates

Nothing can be more stressful or worrying than being unable to make bank payments on the death of a business owner due to there being accounts that require the signature of the deceased. This can cause short-term liquidity issues and, as such, needs careful thought in advance.

Articles of Association

The Articles give a framework which can be used to provide certain restrictions on shares. For example, they can be used to restrict who has the right to purchase shares from a shareholder in the event that they want to sell. They can also provide a mechanism for share valuations. In well-established companies, the Articles may be very old and not fit for purpose, therefore a regular review is highly recommended.

Knowledge risk

The successful entrepreneur often does not have time to note their years of experience down on paper. Creating a bible of key information helps mitigate this risk and can also be useful if an exit is contemplated.

A premature death can leave the company in a precarious position and make it difficult for it to continue to operate. It may, therefore, be necessary to hire a replacement at short notice to pick up the reins; which can be very expensive. Key Person Insurance is available to pay out a sum to the company that would enable it to obtain the right resource to pick up where the deceased left off.

Simplifying corporate structures

Complicated corporate structures are always burdensome in terms of compliance, and the unpicking of them can hinder a successful transition in family companies. The earlier this is done the better in most situations.

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