Protecting your business assets – tax and succession planning

As a business owner, it goes without saying that effective tax planning is essential if you want to minimise your tax bills.

However, did you know that some simple steps could also protect your assets and enable the continued smooth running of your business in the event of death or lack of capacity?

All tax and other planning (such as succession planning) for the business owner should be based on a comprehensive approach that takes into account both business and personal circumstances. It must be tailored to address specific family and business requirements – there is no 'one size fits all'.

> **"All tax and succession planning should be tailored to address specific family and business requirements - there is no 'one size fits all."**

Lasting powers of attorney

It is becoming increasingly common for individuals to make a lasting power of attorney (LPA) to manage their personal finances, health and welfare in the event that they lose mental capacity.

A LPA is a document that takes effect during the donor's lifetime and is completely different from, and separate to, a will. There are many reasons why, as a business owner or director, you should consider making a LPA at the same time as you take advice about your will and estate planning. This will help significantly with the management of your business if you lose mental capacity in the future.

A business LPA allows the donor (the business owner) to appoint an attorney (or attorneys) of their choosing to make decisions on their behalf concerning their business interests. If you lose mental capacity and do not have an LPA, any assets in your sole name (including business assets owned by you personally, or shares held in your name) are effectively frozen because there is no one authorised to deal with them and there is no one with authority to make decisions on your behalf.

Different considerations may apply depending upon the structure of your business, so you must take advice. It may also be advisable in certain circumstances, that you make more than one LPA – one to handle personal finances and another to cover business interests.

Trusts and taxation

The future succession of your business should be a priority. It's not something that any of us want to think about but you do need to identify who will have control in the event of your death, and this is where a trust could be beneficial.

The tax treatment of trusts, especially where Inheritance Tax (IHT) and Capital Gains Tax (CGT) are concerned, is a major factor in choosing the right kind of trust.

Life interest trusts give your beneficiaries the legal right to receive the income from, or to use property comprised in the trust, and this right normally lasts throughout the beneficiary's lifetime. You can also set out who is to receive the trust assets after the first beneficiary's death.

Discretionary trust arrangements allow access to both income and capital to a wide range of beneficiaries at the discretion of the trustees, but often guided by a letter of wishes.

The other tax to consider in relation to the use of a discretionary trust is income tax. The income on trust assets is taxed at the trustees' rate of 45%. In addition, there is no personal allowance for trustees and the entirety of any income (after the first £1,000) will suffer this rate.

Lifetime gifting and inheritance tax

The inheritance tax threshold is currently £325,000 (with married couples and registered civil partners having a potential combined threshold of up to £650,000). There is also now an additional tax-free allowance that applies to residences, provided certain conditions are met.

Contact us

in Blake Morgan LLP
w blakemorgan.co.uk

BLAKE MORGAN

If the value in your estate including the value of your home, personal belongings, bank accounts, shares and investments exceeds the relevant threshold, you may be thinking about passing on some of this to the next generation sooner rather than later, with a view to reducing the potential IHT liability.

Lifetime gifting can be a simple and effective IHT planning strategy, but it is essential to take expert advice. There are various exemptions, but it is important to be aware that gifts can have tax consequences – if you gift an asset that has risen in value since you bought it then CGT may arise on the making of the gift, even though you are not realising the profit. So for example, if you give away a second home to adult children and the property is worth more at the date of the gift than when you first acquired it, the gift could trigger a charge to CGT payable by you.

Setting up a trust in your lifetime can also offer significant IHT benefits, provided, amongst other things, that you survive for seven years from the date of settlement and are not a beneficiary of the trust assets yourself.

It is therefore particularly important to take expert advice if you are considering making a gift into a trust rather than to your beneficiaries outright. A trust is a separate entity for tax purposes and there may be tax consequences, as well as other points to consider.

“Lifetime gifting can be a simple and effective IHT planning strategy, but it is essential to take expert advice.”

Contact our Business Team

James Williams
Partner
E: James.williams@blakemorgan.co.uk
T: 029 2068 6214

Martin Kay
Partner
E: Martin.kay@blakemorgan.co.uk
T: 020 7814 6919

Simon Staples
Partner
E: Simon.staples@blakemorgan.co.uk
T: 0118 955 3083

Stephen Archibald
Partner
E: Stephen.archibald@blakemorgan.co.uk
T: 023 8085 7052

Offices in:
Cardiff
London
Manchester
Oxford
Reading
Southampton

Contact us

in Blake Morgan LLP
w blakemorgan.co.uk

BLAKE MORGAN

03/25 Public