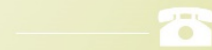


User Guide



Why Should I Make a Will if I Have a Business?



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Have you made plans for what would happen to your company if the person at the helm were to die suddenly? It is particularly important to make a will if you own all or part of a business. Pearson Solicitors are well versed in assisting commercial clients in dealing with their business assets.

Issues to Consider

On my death, will the business have to be sold or who will continue to run it on behalf of the family?

Who may be the right person to run the business in that situation?

What would happen to the key staff? Is key man insurance in place so that the family are not put into a forced sale position?

Have you consulted with all interested parties and committed your thoughts to paper as a guide for your family, staff and shareholders?

What powers and indemnities must I give to the executors and trustees of the Will so that they will be able to run the business?

Will Business Property Relief from Inheritance Tax be available?

If the business is to be run by, or on behalf of, the family how will I be able to provide for other members of the family? Will there be payment by instalments to a trust fund? Is there enough profit to afford this?

If the business is a company, are there any restrictions on the transfer of shares of the company, or pre-emption rights, in the Memorandum and Articles of Association of the company?

Will the management structure be sufficient to continue the running of the business, or will changes have to be made?

Is the existing corporate structure the most appropriate? Is there a group of companies and if so are the assets held in such a way that Business Property Relief will be available?

What pension arrangements are in place? Do these still fit your objectives or would an alternative form of pension better provide for you and your family?



What instructions have you given to the pension company as to your wishes? Will this be done in the most tax efficient way?

Will it be beneficial to create trusts of shares, to split shares or to create preference shares or deferred shares in order to achieve your objectives in a more tax efficient manner?

Business Property Relief

Business Property Relief from Inheritance Tax is available at 100% for a trading business (not an investment or property business) which has been owned for two years. For example, if someone has owned a manufacturing company for over two years, there will be no Inheritance Tax payable on the value of the shares of the company in the event of his or her death.

Business Property Relief is available at only 50% for any land or building, plant or machinery owned by a partner or controlling shareholder but used by the business. There are several cases which have looked at whether Business Property Relief should be available and whether or not the company is a trading or investment company. Mainly, these are in situations where part of the income of the business is from investment and property and part from profit from trade. It can be difficult to determine whether Business Property Relief will be available, although this is, of course, a very important issue when considering how much Inheritance Tax may be payable in the event of death.

In looking at this issue it is necessary to consider the overall context of the business, the capital employed in the different parts of the business, the time spent by employees on the various aspects of the business, and the relative turnover and net profit from each of the activities of the business. There is no relief if the business is subject to an agreement that it should be sold.

Suppose the owner of a business has shares in a trading company worth £500,000 and other assets of £500,000. He proposes to leave the shares to his wife and the rest of his estate to his son. The shares left to the wife will not be subject to any Inheritance Tax as any gifts to spouses are exempt. There is an Inheritance Tax nil rate band of £312,000 as at 6th April 2008. Therefore, of the gift of £500,000 to the son £312,000 will be exempt leaving a tax liability of 40% on £188,000, amounting to £75,200.

If, however, the shares in the trading company had been left to the son there would have been 100% Business Property Relief and so no tax would be payable on the shares in the business. In addition, the husband could have left a further £312,000 to the son free of any Inheritance Tax, and the balance of £188,000 to his wife, free of any Inheritance Tax because of the spouse exemption.

Trustees' Powers

As mentioned above, it is necessary to give the trustees the necessary powers and indemnities in order to be able to run the business. These powers can be summarised as follows:

- To carry on a business
- To run a business in partnership with others
- To employ a manager
- To appoint and pay agents
- To use other assets of the estate in the running of the business
- To incorporate the business
- To borrow
- To permit self dealing
- Indemnities against loss. It will, of course, be necessary to consider whether the bank will agree to such indemnities.

Please note that this is a brief guide on the impact on a business of Inheritance Tax. It is important to seek the advice of your solicitor as each person's circumstances are different. The information in this guide is based upon the 2008 budget and may be subject to amendment.

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We pride ourselves on offering the highest standards of client care giving you the most up to date and practical solutions to any problems you may have. We can be contacted outside normal business hours, and will come to see you if you are unable to attend the office.

We believe it is very important that there should be no hidden surprises for you when it comes to charges. The first short interview with us is free. After that, we keep you fully advised of our charging methods and how much you will have to pay.



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To speak to a solicitor about any of the issues raised in this User Guide, please call 0161 785 3500 or email: enquiries@pearsonlegal.co.uk