

Transfer of Business and Succession Planning

The importance of careful planning for the passing of the control and ownership of a family business often does not get the attention that it deserves. Succession is sometimes not regarded as a business issue. In fact succession can often be regarded as a private and non-business issue to be addressed by the owner at some point in the future “when the time is right”. In the economic environment of today when most forms of property and assets are at their lowest relative valuation in generations, the time may just be right for optimum succession planning.

Owners should appreciate that a proper succession plan, addressing both legal and tax issues that can arise, can save them and their successors money as well as ensuring a smooth and efficient transition of their business to the next generation. A properly formulated and delivered plan can ensure the preservation of family relationships after the owner has exited from the business, rather than the confusion and tension that might otherwise arise. Taking appropriate professional advice for each stage of the process is a crucial step to preserve the value of the business which the owner has worked so hard to build up.

Business owners should consider the following:

- 1.** Plan to exit in the most financially beneficial and tax efficient manner both for the owner and the business.
- 2.** Ensure that the business handover has been carefully planned.
- 3.** Make sure that all legal aspects of the succession have been addressed.

When passing on a business to the next generation the tax implications especially when it comes to Capital Acquisitions Tax and Capital Gains Tax require careful consideration. Both rates have recently been increased from 20% to 25% on gifts / inheritances taken, or on gains made since 8th April 2009. Both CAT and CGT can arise on the same transaction, however advantageous tax reliefs are available in the form of CGT retirement relief and CAT business relief that can minimise the impact of both taxes. Planning ahead, at the earliest possible stage and sometimes many years ahead, is essential to ensure the best financial exit both for the owner and the family members or others taking on the business.

Choosing your successor is a long process and one that should be approached in a thoughtful and objective manner. Options include choosing from employees or family members or recruiting from outside the business. With either option it is advisable to ensure objectivity by involving a third party advisor or trusted business colleague in the selection process. Once a successor has been identified a timetable for the transfer of control and the retirement of the owner should be agreed and followed through.

Making a Will is the most basic form of succession planning. However there may be tax advantages in arranging for transfer of assets to dependents prior to death. Equally taking into consideration the requirements of minor dependents or family members with special needs and providing for them in a Will is an important step. A properly executed

Employment Contract setting out entitlements, options, terms and conditions for whoever succeeds will ensure that the planned structure for the future business is put in place.

Where there is a transfer of share ownership as part of a succession plan a properly executed legal agreement to meet the needs and wishes of the owner is a critical step in the process. The owner, following tax and legal advice, will have to decide whether it is more beneficial to transfer the business by way of share transfer or asset transfer or a combination of both depending on the individual circumstances.

The development and implementation of a succession plan is a very important part of long term business planning. It needs to be carefully planned and diligently executed and can be a time consuming project that requires much consideration, professional guidance and advice, and must encompass all aspects of the business.

In conjunction with your tax advisors as required we can provide the relevant legal advices and would welcome the opportunity to meet to discuss your options. For further information please contact Fachtna O'Driscoll on 021 4278131 or fachtna.odriscoll@fodlaw.ie or Robert Desmond on 021 4278131 or robert.desmond@fodlaw.ie.