MILLER SAMUEL
SOLICITORS

SUCCESSION AND THE FAMILY BUSINESS

We all know that it can be upsetting when a member of your family dies but if that person dies without leaving a Will and was also running the family business this can have disastrous consequences for the business. In those circumstances and without forward planning, family wealth could easily be eroded. Good planning goes far beyond the presence of a simple Will and requires careful consideration and monitoring .

It is all very well to encourage or coach a younger family member to take over the business when you die but these plans need to be set down in writing. Statistics show that only about one third of the population have up to date Wills. Remember you will not be around to tell anyone what you intended. If your wishes are not clearly set out in writing then your heirs may find themselves inheriting a business that they know nothing about nor are interested in. The child working in the family business and who you want to inherit the business may find themselves having to raise funds to purchase their sibling's interest. Alternatively ,the child who does not inherit the family business may end up paying Inheritance Tax (IHT) on their share of your other assets as some family businesses are exempt from the tax. Your intentions therefore need to be well thought through and set out clearly in a valid Will.

If the value of your estate on death is likely to attract IHT then you must consider overall tax planning. Whilst some privately owned businesses are exempt from IHT, this is not always the case. IHT liability can easily be reduced by prudent tax planning. This is often triggered off at a Will review stage. Tax planning may include amongst other things taking out simple life insurance to meet the potential IHT liability, the use of trusts or the use of your annual gift allowance to reduce the overall value of your estate. A shareholder or partnership agreement may deal with the business however it is important to consider the overall asset position and the interaction of the rules which apply to your various assets.

Inheritance tax planning requires constant review. There is no quick fix.

The owner of a family business and especially sole traders should also consider making arrangements for a Power of Attorney. This an authority given to an individual to deal with certain aspects of your affairs and it can be restricted to your business affairs. The Power of Attorney can become effective if the granter becomes incapacitated and can be cancelled when the granter is again able to run the business.

Simple but effective planning coupled with regular reviews can ensure your intentions are met and it can ensure that continuity of the business and that family wealth remains intact.

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