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CHARTERED ACCOUNTANTS

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Passing on the family Business - Succession planning

Many thriving family businesses have failed to succeed after the first generation, one of the reasons being the failure to plan adequately for succession.

While people are conscious that various taxes are triggered on succession, some are not aware of the generous reliefs that are currently available which may allow them to transfer their assets to the next generation efficiently and at a reduced tax cost. In recent months as a result of increasing asset values there has been significant activity with parents passing wealth and assets on to the next generation where they might otherwise have not done so due to the previous unprecedented fall in value of business and property related assets. Combining this with the tax reliefs that are currently available, there has not been a better time to consider succession planning.

On a transfer of assets to the next generation, there are normally three taxes to consider; capital gains tax for the disponer, capital acquisitions tax for the beneficiary and stamp duty for the beneficiary.

Capital gains tax
No charge to capital gains tax arises on transfers arising on a death. However, in the context of transfers during a lifetime, capital gains tax at a current rate of 33% applies and retirement relief should be considered. This relief is the cornerstone of any tax planning for transferring a business to the next generation as it can significantly reduce or even eliminate any capital gains tax payable.

Retirement Relief
Retirement relief is a relief from capital gains tax on the transfer of business assets. The term retirement relief is a misnomer as you are not required to actually retire but only to be aged 55 years or more and make a disposal of your business or part of your business, of which you have been a working director for 10 years. There is limited relief (up to €3m) where a business is transferred to a child. The same relief applies on the transfer to a nephew or niece who has worked in the business for 5 years. When the disposal is not made to a child (or nephew/niece as above), relief is restricted to sale proceeds of €750,000 & €500,000 depending on age. Careful planning is advised if it is intended to make a disposal to a person other than a child.

Capital acquisitions tax
Capital acquisitions tax (CAT) is a tax on the recipient of gifts and inheritances. Gifts between spouses are exempt. Every other beneficiary is entitled to a tax-free threshold, the amount of which depends on the relationship between the disponer and the beneficiary. For 2011, they are as follows:
• Group A - €310,000: where the beneficiary is the child of the disponer. This group also includes nieces, nephews, grandchildren and parents in certain circumstances.
• Group B - €32,500: where the beneficiary is a parent, sister or brother, niece or

nephew or grandchild.
• Group C – €16,250: others.
Amounts in excess of the tax-free thresholds are subject to CAT at 33%.

Business Relief
Business relief was introduced to deal with the common situation of families where on the receipt of a gift or inheritance needed to sell the business in order to fund the tax bill. Effectively, business relief allows you to ignore 90% of the value of the business for tax purposes. Assets such as land and property, which are used in the business but which are personally held by the disponer also qualify for business relief, provided those assets are transferred at the same time as the business. For the relief to be available, the business property must have been owned by the disponer for at least 5 years in the case of a gift and 2 years in the case of an inheritance.

Stamp Duty
No charge to stamp duty arises on inheritance or on gifts to your spouse. In the case of lifetime transfers, however, even in the case of gifts, stamp duty applies on the market value of the asset being transferred. The rate of stamp duty on a transfer of shares is 1%. In the case of land, the rate of stamp duty varies but there is a relief for transfers between blood relatives which can result in a reduction – currently this rate stands at 1% on such qualifying transactions.

General Points
The main purpose of succession planning is to ensure that assets are passed in the most effective manner whether during lifetime or on death. Therefore the availability of reliefs should be examined and where possible reorganise to maximize reliefs.

Quite often there exists an opportunity for parents to extract value out of a trading family company in a tax efficient manner while transferring the balance of their shares to their children, using additional pension contributions or termination payments etc. In addition if both parents qualify they could receive up to €1.5 million tax free on a disposal to a third party under retirement relief.

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