

**ESSENTIAL ESTATE PLANNING-DON'T SELL THE FAMILY TRADING
COMPANY NOW AND DO A RIGHTS ISSUE**

The taxpayer (Mr X) may own shares in a family trading company which qualifies for 100% business property relief on his death.

If the company is sold for cash one should be able to get a reduced rate of CGT under the Entrepreneurs' Relief provisions in TCGA 1992 s169H (10% instead of 28%) with a bit of planning *but* it does mean there will be no CGT uplift on death (TCGA 1992 s62) re the holdings of Mr X and 100% business property relief (called BPR) from inheritance tax (IHT) will not be available.

Thus on a sale for £10m Mr X may pay £1m CGT and if he dies £3.2m IHT. If on the other hand Mr X did not sell the shares and Mr X died and his personal representatives sold the shares the tax payable is nil.

In *Swain v M & R* [2012] STC 1760 Mr X sold his family company and died shortly thereafter and thus he did not get a CGT uplift on death and the 100% relief (BPR) from IHT which is available to shareholders in family trading companies was lost as Mr X died holding cash.

Other assets such as cash, bonds, share portfolios and the house do not benefit from any IHT reliefs and bear the full IHT charge on death. It is only when taxpayers do the figures do they realise how much of their hard earned monies will disappear on death.

The best advice may be depending on all the circumstances is to retain the family company and inject money into the family company following a reorganisation.

If the family company is retained IHT is mitigated on death. However the cash and bonds etc still bear duty (unless the spouse exemption is available in which case the problem may be postponed to the second death).

If there is a company reorganisation and a rights issue to the shareholders and Mr X puts the new share capital monies into the company to say buy the freehold of the premises from which the company trades or for other trade purposes those funds are outside the IHT net.

Thus, if the funds are worth £3m and nothing is done the IHT charge on death is £1.2m. If prior to the death the same was put into the company under a reorganisation the duty on the £3m of value is nil even if the subscriber dies within 2 years (2 years is the period that shares must generally be held for before they qualify for BPR). See IHTA 1984 s107(4).

In *The Exors of Mary Dughan-Chapman v HMRC* SpC 666, X the deceased simply put money into the family trading company (£300,000) and shortly died and it was held that if it had been done by way of a rights issue properly so called no IHT would have been payable (see para 49 of the decision).

CONCLUSION

The approach of keeping the family company and adding funds thereto under a rights issue is attractive.

PATRICK C SOARES

