PENSIONS
INVESTMENTS
LIFE INSURANCE

Shareholder Protection – an advisors quick guide - LIFE ADVISORY SERVICES

This document is intended as a brief introduction to shareholder protection. For more detailed information please see our shareholder protection advisors guide.

The sudden death of a shareholder in a private limited company can cause problems for both the surviving shareholders and the family of the deceased shareholder. For example the surviving shareholders could lose control of the business as they may find themselves working with the deceased's family. And as for the deceased's family, they may be left with a share in a business, an illiquid asset but with little or no income.

Life assurance can provide a solution to these problems outlined above by providing liquid capital on the death of a shareholder to enable;

- the surviving shareholders to retain control of the business as the deceased's shares are bought back by the company, and
- the family of the deceased shareholder to realise their shares for cash, shortly after death.

The solution outlined above can be achieved in one of two ways

Personal Shareholder Protection OR Corporate Shareholder Protection

The following table is a quick comparison of both arrangements which may assist you and a brief explanation of both options is overleaf.

	Personal Shareholder Protection	Corporate Shareholder Protection
Premiums paid by	The shareholder personally	The company
Plan owned / proceeds payable to	The shareholder personally / the trustee of the life assurance plan	The company
Who will benefit?	Only shareholders who participate can benefit	All shareholders
Suitable for 'young' start-up companies?	Yes	*No – The shares must be owned by the vendor for at least 3 years in order for the sale to be tax efficient
Suitable for Investment companies	Yes	*No – The company must be an unquoted trading company i.e. a business which carries on a trade or trades
Suitable where non-resident shareholders	Yes	*No – The vendor of the shares must be resident and ordinarily resident in the State for the sale to be tax efficient
Suitable if all shareholders not participating	Only shareholders who participate can benefit	Company can effect cover on just one of its shareholders

*Please refer to the rules for Capital Gains Tax treatment on the sale of shares to a company in Appendix III of our Shareholder Protection Advisor Guide on www.bline.ie

THE TWO OPTIONS

Personal Shareholder Protection and **Corporate Shareholder Protection**

PERSONAL SHAREHOLDER PROTECTION

The shareholders enter into a personal legal agreement with each other to "buy out" a deceased shareholder's shares in the event of his death.

To provide the funds to fulfil their personal obligation under the legal agreement each shareholder personally effects life assurance cover which is payable to the surviving shareholders on his death.

The surviving shareholders can then use the proceeds of the life assurance plan to "buy out" the deceased's next of kin in line with the legal agreement.

The "Personal" arrangement is relatively simple to arrange and the legal and taxation issues are straightforward.

The main drawback of this solution is that the cost of the arrangement is borne personally by the individual shareholders out of "after tax" income. If the company funds a "Personal" arrangement the cost is treated as a "benefit in kind" for each shareholder.

CORPORATE SHAREHOLDER PROTECTION

The company enters into a put / call legal agreement with each of its shareholders to buy back shares from their personal representatives in the event of death.

The company takes out a life assurance plan on each shareholder, to provide funds to enable the company to fulfil its obligation under the legal agreement.

In the event of death, the proceeds of the life assurance plan are payable to the company to be used to buy back shares from the deceased's next of kin in line with the legal agreement.

The major advantage of the "Corporate" arrangement is that the cost is borne totally by the company because the plan proceeds are for the benefit of the company - with no "BIK" implications for the individual shareholders.

However, this option is complex to set up due to the fact that certain company law provisions must be satisfied and formal approvals are required.

In addition there are a number of conditions that must be satisfied to ensure the buy back of shares from the family of a deceased shareholder can be achieved in a tax efficient manner, thus making it unsuitable in certain circumstances.(see table overleaf)

THE BENEFITS OF SHAREHOLDER PROTECTION

The benefits of both the personal and corporate shareholder arrangements are the same:

- On a death the surviving shareholders retain control of the company,
- The dependants of a deceased shareholder can realise their shares for cash, shortly after death.

Each company's individual circumstances will determine which option, either personal or corporate shareholder protection, meets their needs, but whichever route you chose, all it's really about is putting life cover in place to ensure that the necessary funds will end up in the right hands at the right time, in both a cost efficient and tax efficient manner.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

Information is correct as at April 2015 but is subject to change.

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