

Ministry of Justice Consultation: Proposals to reform fees for grants of Probate

Institute for Family Business Response

Introduction

The family business sector in the UK now comprises some 4.6 million businesses. From micro start-ups to worldwide brands, the innovation, agility and resourcefulness of family owned firms is second to none. A healthy economy must be a balanced economy, and a thriving family business sector is an essential part of this mix.

By their very nature family firms take a long term view, built on long term stewardship of people and resources. They act as incubators for entrepreneurship, future growth and employment. In the UK almost 12 million people are now employed by family owned businesses. The family business sector is a great British success story, generating a quarter of GDP and paying £125 billion in tax.

The Institute for Family Business is the voice of UK family business. Our membership has a combined turnover of around £100bn and employs half a million people.

Response

IFB's submission focuses on the likely impact of the proposed changes on the owners of individual family businesses and the ownership model as a whole. We would welcome the opportunity to discuss the issues raised in the consultation document, and our response, with officials.

We are concerned about the significant increase in probate fees for estates valued at over £50,000 and that the proposed rates do not reflect the cost of processing an application. It appears that fees from probate will be used to subsidise other areas of the Courts system which will burden both the estates and their executors with a disproportionate financial burden.

In relation to the higher rate bands in particular, we are concerned about the availability of funds within estates to pay the fee and the potential impact this could have on family business ownership and behaviour.

The proposed rates are set at such a high rate that it is likely that the executors of the estates of some family business owners will have to seek liquidity from the business to pay the fees. The presumption within the consultation is that an estate worth over £2 million would have access to significant levels of cash within the estate or which could be loaned against the value of the estate in order to pay the proposed fees. In practice, it is far from clear how this would work. If the bulk of an estate is made up of shares in, for example, a close family company but where there is no liquidity then it is not obvious that the executor would have either the market or the legal right to borrow against the shares or the underlying assets.

Many estates might include family businesses which, although their shares are valued at above £2 million, are cash poor. A farming business, for example, may be land rich but have little access to cash, and the estate of an entrepreneur who had spent years building a business and reinvesting its profits into its growth would similarly have limited access to liquidity.

Family businesses, more than other business models, tend to reinvest profits to fund investment, as they are traditionally reluctant to rely on debt financing. In this situation executors would likely seek liquidity from the business to pay the fee, either through sale of shares or a reduction in the level of investment.

This could drive successful family businesses to make decisions on ownership or sale of shares in order to meet a short term need for cash to pay this fee, rather than making decisions in the long term interests of the business. This would be to the detriment of the business, both because it is unplanned and because it may reduce investment in the business, and subsequently potentially to the detriment of the employees of that business and the wider economy.

As well as the financial impact there is an emotional dimension to this issue, with the recently bereaved now being faced with a situation where by they have the additional stress of having to find a significant sum in order to pay the proposed fees. This would be compounded where the only means to realise the necessary funds is to sell shares in the family business, a business with which that family may have had a connection for many generations. Many potential executors may refuse appointment in order to avoid this emotional burden.

Unlike the probate scheme which operated between 1981 and 1999, this proposed system would be based on the gross value of the estate. The previous system was based on the net value of the estate, after reliefs but pre IHT. Choosing to calculate a fee in this way will particularly impact the estates of those who are shareholders in trading family businesses.

We are also concerned about the impact of a second death within a family. If someone dies and passes shares valued at £2 million in their family business to their spouse, under the proposed scheme they would incur a £20,000 fee. As above, they may not have access to this amount as cash. Once that spouse dies and passes those shares on to their children, they will again incur the £20,000 fee. Those children may have been left shares in a successful business but not have access to the required £20,000 to pay the fee, especially if they are in their twenties or thirties. More clarity about the impact of these proposals on this issue is required.

We are very concerned about the impact of these proposed reforms to fees for grants of probate, and urge the Ministry of Justice to reconsider these proposals.

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