



CASE STUDY

LOOKING AT THE WHOLE PICTURE OF THE BUSINESS AND THE FAMILY.

► AS FAMILY BUSINESS ADVISERS, WE ARE TASKED WITH NOT ONLY BEING ABLE TO PROVIDE GUIDANCE ON BUSINESS AND TAXATION ISSUES, BUT ALSO WITH FACILITATING RESOLUTION OF PERSONAL MATTERS THAT IMPACT THE BUSINESS. IN A RECENT EXAMPLE, WE ACTED AS MEDIATORS ON ISSUES THAT REALLY WERE NOT SIGNIFICANT, BUT WERE CAUSING SOME DISCOMFORT WITHIN THE WORKPLACE AND AT HOME.

Background

Our Clients business was founded 15 years ago by Moira (mum) and David (son). The initial capital was provided by Moira securing borrowings against the family home. The business operates in the tourism and travel industry and has developed a market leading position during that time.

David has provided financial expertise and policies/procedures along with the design and creative talent behind the advertising materials, while Moira has practical "hands on" experience of the travel industry which she has brought to the business. This combination has been successful by each owner playing to their strengths.

Over the life of the business, their roles have expanded and changed, as you would expect in any business. Steven, David's brother, also joined the business 9 years ago, initially in a junior role.

The current situation is that Moira retains a controlling ownership interest in the business, but does not have an operational role any more. David is the CEO and Steven is the General manager. Moira, David & Steven are all Directors of the company.

David and Steven were allocated shares in the business four years ago, for very little consideration. This transaction was coordinated by their previous adviser and continues to contribute to a certain level of discontent from Moira.

The ownership of the business has evolved over the years without input from us or any other advisers and as a result is not structured in as effective a manner as it could be.

We have been acting for the business and individuals for the past three years and over the past 12 months we have experienced an increasing amount of friction between the parties in

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Family Business

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relation to a number of issues.

Historically, Moira was usually the person we dealt with in relation to finance matters and information in relation to the compliance work required. This resulted in us usually only getting one side of the story regarding "family matters".

Issues

David & Steven's sister – Carly – has never worked in the business and moved to Europe with her husband several years ago. They have recently moved back to Australia to "start over" with their children aged 3 & 5. There is some history between the siblings which has resulted in no direct communication between them in the last 6 years.

Moira wants to provide for her grandchildren (Carly's children) in a similar manner to her other grandchildren, specifically in the provision of private school education for them.

Moira has asked for assistance in setting up an appropriate vehicle for this purpose, but qualified this request with the information that David & Steven refuse to pay her any money from the business to achieve this end. In her opinion, it's her money and she wants access to it.

This adds to the recent stories from Moira about the boys "pushing her out" and refusing to pay her for her shares four years ago and constitutes the main "issue" that we seem to be trying to deal with.

These issues requiring our attention forced us to call a meeting of all directors to make sure there were no surprises and that everybody was aware of what we had been instructed to do.

Outcomes

We hosted a meeting of all the Directors to discuss all of the issues raised, in addition to a number of items outstanding from the year end compliance work.

BDO issued an agenda to all parties prior to the meeting and included all issues of which we were aware. We chaired the meeting of the three directors. We discussed the compliance matters first, in order to gain closure on the current taxation issues.

The "sticky" issues were then tabled for discussion. As expected, the tension in the room became more pronounced as we introduced the issues and sought input from the directors individually.

When the issue of providing funds for Carly's children was tabled, Moira's view was put forward for discussion. Steven & David were not surprised by the allegations and their version of events is markedly different from Moira's.

According to David & Steven, Moira had told them she was going to transfer \$100,000 from the company bank account to her personal account, in order to set up an education trust for her grandchildren. When they challenged the method of withdrawal, as well as whether she had sought advice from BDO on the structure of the transfer, she reacted by accusing them of stealing her money.

David and Steven raised their concerns about the tax implications of taking the cash out of the business without considering all of the available options and seeking professional advice. BDO

backed up this view and a number of options were discussed, including how to minimize the impact from a tax perspective.

Other issues were then “aired” in this forum, some of which had festered for years. David & Steven are happy to provide for their sister’s children, but they are adamant that it should not be to the detriment of Moira’s financial position. They are focused on making sure that Moira has sufficient funds to enjoy her twilight years and making sure that it is done in an effective manner.

The meeting was scheduled to last for 2 hours and ended up after over 3 hours of discussion. By the end of the meeting we had established that David and Steven were concerned that Moira was not appropriately planning for her own financial security and that was the driver behind their questions.

Conclusion

As advisers, we need to remember that we act for all of the parties in circumstances such as these and that any advice we provide is based on the whole picture, not just one version of the events.

In this situation, we have been instructed to provide our opinion on how best to achieve the following aims:

- Transition of shareholding between current owners for a fair value
- Advice in relation to Moira’s needs from a tax perspective
- Opinion of the most effective manner of providing funds for the education of Carly’s children
- Tidy up of the group structure, taking into account tax issues as well as commercial sense
- An expanded role of advising the clients on strategic and planning issues.

MORE INFORMATION

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