

Getting the best tax advice for your business

All privately owned businesses will require specialist tax advice at least once during the life of the current business owners. That specialist tax advice will either relate to a sale of the business (be it a trade sale, MBO, or MBI) or to a transfer of the business within the family. Whether the business is being sold or transferred within the family, one thing is certain: the transaction has the potential to result in significant tax costs.

Having advised many family businesses and private businesses on that all-important sale or transfer, here are a few tips or pointers for those who take tax advice on the sale or transfer of a private business.

- **Tax rules are constantly changing.** It is amazing how much tax rules and the Revenue approach can change over a relatively short period of time. The tax rules (and tax rates) that applied to a business sale or transfer in 2006 compared with those applying 10 years later in 2016 are very different. A lot changes in 10 years.
- **Getting the right structure takes time.** It goes without saying that advice should be taken as early as possible prior to a sale but this can be critical when it comes to getting the optimum tax structure. For example, in certain cases a lead in period of 12-18 months could be required on a business sale to avail of tax reliefs.
- **Understand the sale process.** The sale process, be it the tax due diligence exercise that the purchaser will undertake, the earn-out that might form part of the price or the lock in period for key management, can dictate the flexibility to plan tax structures. It is essential to understand the sale process well in advance.
- **A family transfer can be complex and emotive.** A transfer of the business within the family is never a simple process, from a family and emotional perspective. This invariably means that the transfer within a family can take much longer than envisaged. The good news, however, is that the tax rules today are still favourable to a transfer of business from parents to their children.
- **Ask yourself; What next?** To get the best tax advice and structure on the sale of your business, you need to consider what you will do with the sale monies. You may have a new business venture already in your sights or you may decide to use part of the monies to help your children onto the property ladder or to start up their own business. The best structure to use for the sale of the business will differ depending on how you plan to use the proceeds.
- **Understand your risk tolerance.** Some tax structures have “tax risk”. The business owners should be very clear on their risk tolerance on tax planning.
- **A tax adviser can be for life!** It is highly unlikely that the need for good quality tax advice will end once the sale or transfer takes place. The need for tax advice will continue whether it is advice on tax structures on investment of sale monies, advice on estate planning or advice on planning the business structure for the next generation. If your tax adviser has got to know you and your family on the sale/transfer, then assuming you were happy with the service and advice, that tax adviser should serve you well on future tax issues.

What to ask in 2016

There can be a multitude of tax issues that arise on a sale or transfer. Whether you are selling a business or transferring a business, the following questions are the key questions to ask your tax adviser when you first meet:

Sale of a private business

- Please explain the due diligence process?
- What tax warranties and indemnities will we have to provide?
- How is an earn-out taxed?
- Any difference on the sale of different assets (e.g. shares, property, intellectual property)?
- Any opportunities to structure the sale more efficiently?
- Any opportunities for estate planning?

Transfer of a business within the family

- Will there be any capital gains tax costs for the current owners?
- Any tax costs of owners retaining some equity interest?
- Any stamp duty costs for family?
- How much gift tax will be paid?
- Are we making maximum use of all reliefs?
- Explain the difference between a transfer during lifetime and on death?

Conclusion

Tax is a complex area where the rules can change considerably over the years. With good advice and advance planning, the tax cost on a business sale or transfer should not be prohibitive and indeed, in some cases, the level of tax might come as a pleasant surprise not a shock!



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