



THE IMPORTANCE OF BUSINESS SALE

FINANCIAL PLANNING

By Brendon Falk

With a Masters Degree in Financial Planning (MFinPlan), I can tell you that many buyers and sellers totally miss the opportunity to engage in personal financial planning or on ways to improve their financial position. Furthermore, it has been my experience that you can't always rely on your advisors to bring you all the information. You should be asking questions and doing your own preliminary research so you can make informed choices. Many people also fail to act swiftly either both before and after selling. The most important thing is that you CANNOT wait until you have sold and you MUST act quickly after you have sold due to contribution timeframes. These actions and choices will greatly effect how much tax you pay and whether your assets are protected from creditors.

Choice of Investment Structure - This refers to the type of entity that will own and operate the business. The types of entities include a Sole Trader, Partnership, Trust and Company or a combination of multiple entities. The chosen structure greatly effects the buyers and sellers financial and legal standing. For example, the buyers choice of investment structure will influence the overall tax efficiency of the entity and its members and afford them reduced legal liability or asset protection from trade creditors. Sellers will already be operating under an existing investment structure and this will determine what if any Capital Gains Tax (CGT) concessions, discounts or offsets are available, what tax rates apply and how the net sale proceeds are distributed. Choosing an investment structure is not a simple decision as your family situation, type of business and the value of the business are factors worthy of consideration. Please ensure you have discussed this with your financial and legal advisor prior to signing the contract. If you change from mum & dad as buyer to Mum & Dad Pty Ltd, it can trigger a double payment of Transfer Duty. There are also disadvantages with using various structures such as companies being unable to claim the 50% CGT discount and Division 7A makes it difficult to pay monies to Directors or members. You should also consider the cost of accounting and statutory reporting requirements involved with complex structures.

Tax Efficiency - Comes from choosing an investment structure that provides the flexibility to distribute business income (not wages or salaries) to various other members of a discretionary trust, in accordance with their individual tax circumstances. In the situation, the trustee has discretion as to whom will receive income. Furthermore, companies are able to employ members or Directors as paid employees whereas sole traders and partners can only draw wages. Therefore, companies can offer complete remuneration packages that include superannuation, salary packaging and fringe benefits to its employees and take advantage of the flat 30% company tax rate. Timing is also an important aspect of buying and selling a business in a tax efficient manor. Many purchasers are buying as a way of deferring capital gains from previously disposed assets, so they are under timing constraints. Sellers must also consider when is it most favourable to sell in order to minimise capital gains tax. This can be achieved through timing the sale of your business for the start of a new financial year when your taxable income for that year is low.

Offsets, Contributions & Concessions— In the event you have losses that are held in your existing investment structure, these can be utilised as an offset against future capital gains. Similarly, if you have a number of investments owned by the one entity (i.e. shares and business assets), you might chose to liquidate both assets if the capital losses of asset A effectively reduce the capital gains of asset B. There are also general CGT concessions available to Trusts / Individuals (50%) and complying Superannuation funds (33.33%) who dispose of assets. This will apply to those holding business real property in a SMSF.

Before and after the sale, sellers often make the maximum concessional super contribution to reduce their CGT liability due to the fact that concessional contributions to a complying superannuation fund are taxed at a rate of 15% compared with 46.5% for all taxable income in the top marginal tax bracket. Many sellers also qualify for the CGT Concessions for Small Business. There are four discounts which can be applied after the general 50% discount for individuals and trusts and after losses have been applied. The four discounts are:-

- *the small business 15-year exemption* which provides a total exemption on CGT if you have continuously owned the CGT asset for longer than 15 years and are aged 55 or older and retiring;
- *the small business 50% active asset reduction* provides an additional 50% reduction of the CGT;
- *the small business retirement exemption* provides an exemption on the CGT up to the lifetime limit. If you are under 55, the amount is to be paid into a superannuation fund;
- *the small business rollover* allows sellers to defer their capital gains liabilities if replacement assets are acquired.

It is important to consult with your accountant, financial advisor and legal advisor before entering into a contract of sale. It is also worth consulting with them if you are considering putting your business up for sale. And remember, the capital gains is calculated in the financial year in which the contract is dated, not when settlement occurs.

Should you require any further information or assistance on this topic, I invite you to contact me on my mobile 0412 311 803 or by email bfalk@foresightbusiness.com.au.

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