

Taxation Implications of Selling a Business

Selling a Company – Share Sale or Asset Sale?

If you are selling a Company, the two main options* to be considered are either: selling the Company shares (referred to as a “Share Sale” which normally includes all the assets and liabilities) or you may wish to sell just the business with its Assets, Name and Goodwill (usually referred to as an “Asset Sale”).

It will normally be beneficial for you to sell your Company shares rather than go for an asset sale. If the Company sells its business through the sale of assets, name and goodwill, you will then face the problem of extracting the sale proceeds from the Company which could lead to a double tax charge. You will also have to deal with any remaining liabilities and deal with the legal entity of the Company that remains.

**There are other options for formulating a sales deal such as mergers, consolidations, share-swaps, recapitalisations to name a few.*

Entrepreneurs’ Relief

If you are selling a business, the most important consideration (as far as tax is concerned) will normally be whether or not you will qualify for Entrepreneurs’ Relief – this means that you only pay 10% Capital Gains Tax on any qualifying gains. Entrepreneurs’ Relief can be claimed by Directors (and Directors’ spouses or partners in qualifying cases), Sole Traders as well as Partners and Employees of Companies. There’s no limit to how many times you can claim Entrepreneurs’ Relief and you can claim up to £10 million of relief in total during your lifetime.

Please note that many tax professionals believe that Entrepreneurs Relief will be reformed in the near future so that the generous tax savings it offers may soon no longer be available!

Will you qualify for Entrepreneurs’ Relief?

You should be able to qualify for Entrepreneurs’ Relief if you dispose any of the following:-

- All or part of your business as a sole trader or business partner – including the business assets after it closed
- Shares in a Company where you have at least 5% of shares and voting rights (known as a “Personal Company”)
- Assets you lent to your business or Company

If you are selling all or part of your business, all the following must apply:-

- You are a sole trader or business partner
- You have owned the business for at least one year before the date you sell or close it
- You sell or dispose of your business assets within 3 years after selling or closing the business

If you are selling shares, all the following must apply for at least one year before you sell your shares:-

- You have at least 5% of the shares and voting rights in the Company
- You are an employee or director of the Company (or one in the same Group)
- The Company's main activities are in trading (rather than non-trading activities like investment)

If you are selling assets you lent to the business, all the following must apply:-

- You have sold your part of a business partnership or your shares in a Personal Company
- You owned the assets but let your business partnership or Personal Company use them for at least one year up to the date you sold your business or shares

NB Any gain could be exempt if you sell during a period of non-UK residence.

Other considerations

It is important to bear in mind your overall tax and long-term financial position when considering the various options for extracting profits. For example, you may not want to unnecessarily miss out on tax credits or universal credit, losing some or all of your personal allowance, or incurring a child benefit tax charge because you've taken too much income. Also, you should aim to avoid paying tax at the 45% additional rate if at all possible.

Whoever buys your company will normally expect you to extract all of the Company's cash before a sale, although some cash may have to be left behind for "working capital" and in any case, "cash for cash" can be agreed if necessary. If there are substantial retained funds, you may wish to consider extracting them several years before a sale in order to avoid a last minute tax implication.

Summary

If you are thinking of selling a business, remember that tax rules often change and it always pays to take professional advice first.

Stirling Business Solutions Ltd can provide further information, help and advice on selling a business. Contact details are:-

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