

# Tax support when buying or selling a business

## Getting the right advice

Whether you are looking to buy or sell a business (whether in a corporate structure or not) or you are professional adviser assisting a seller or purchaser we can help you in a number of ways. Selling a business is something you are only likely to do on very limited occasions in your lifetime, so getting the tax position right is important.

## How we can help you

We don't believe in a one size fits all approach. Each business is different and our tax consultancy team will determine the tax position that best suits your goals and needs.

## Tax planning

We can advise you on:

- The different ways that the sale can be structured.
- How to maximise the availability of various tax reliefs e.g. entrepreneurs' relief and the substantial shareholding exemption.

- Whether an advance tax clearance should be sought from HM Revenue & Customs prior to the sale e.g. where the consideration includes loan notes or the issue of shares.
- How to structure any deferred consideration from the disposal.
- Structuring consideration so it is not liable to income tax and national insurance under the employment related securities rules.
- The tax consequences for an EIS or SEIS investor selling their shares.

## Sale transaction support

Where appropriate we can:

- Conduct a tax due diligence exercise on the target company or business to identify potential risk areas.
- Review the heads of terms for consistency with the advice being given.
- Review the sale and purchase agreement from a tax perspective.
- Review tax warranties.

- Suggest disclosures that should be made against the tax warranties.
- Review the deed of tax covenant.
- Work closely with the lawyers involved in the transaction.
- Assist parties in handling any claims under the tax warranties or the tax indemnity.
- Advise the vendors of likely capital gains tax liabilities and provide schedules stating amounts and due dates so that they build this into their personal cash flows.

## Additional services

After a sale and the receipt of sale proceeds we can advise on:

- Financial planning.
- Will and trust planning.
- Retirement planning.
- Estate planning, particularly taking into account the impact of the transaction itself.

## Case study 1

We were approached by a client who was looking to sell his company. Negotiations were already underway and draft heads of terms were about to be signed. The 'deal' was for an upfront payment in cash of £4 million plus an earn out that was likely to generate the same amount again. The client was hoping to pay capital gains tax at 10% on the full capital gain utilising entrepreneurs' relief.

With the 'deal' as drafted it was likely that entrepreneurs' relief would have been limited to around £5 million of proceeds, with anything above that attracting capital gains tax at 28%. However, our tax team were able to

restructure the transaction in a way that secured entrepreneurs' relief on the full gain, saving the client over £0.5 million.

## Case study 2

The shareholders of FR Ltd felt that one of the other shareholders ("T") had lost interest in the business and they agreed between themselves to part company. The shareholders had agreed to buy T's shares for their agreed market value.

A company purchase of own shares was not attractive as this would have resulted in income tax being payable by T. Other structures such as a new holding company would

have jeopardised the EIS capital gains tax (CGT) exemption for the other shareholders.

We advised on the creation of an employee benefit trust funded partly by loans and partly by contributions to buy the shares from T. The shares acquired could then be used for share options granted to other employees to be exercised on exit.

This secured the CGT exemption for T and preserved the EIS exemption for the other shareholders. It also enabled the company to give employees the chance to profit from future growth in value without giving away any equity interest in the interim.