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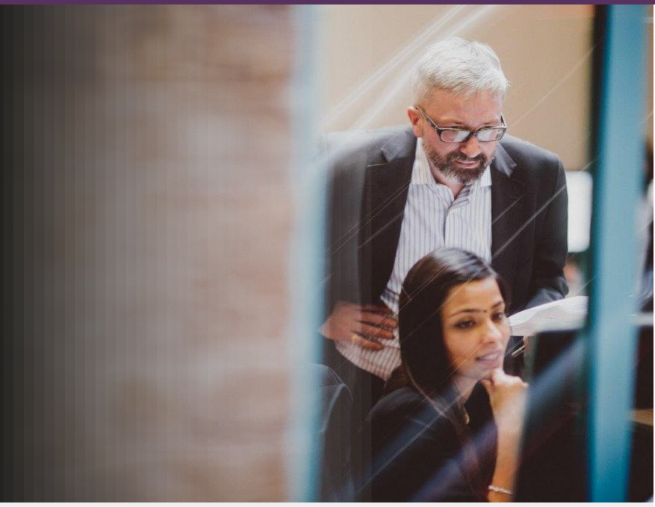

How to sell a limited company

June 2019

It's all in the planning when it comes to selling privately-owned companies

For the founding members of many privately-owned companies, the endgame is focused on selling up before moving on to new ventures or sometimes retirement. But many owners underestimate the time involved in making a business market-ready, or do not seek advice on the different options before they start, nor the route-map to follow to secure a successful sale.

Ideally, an advisory team should be put together, involving a lawyer and an accountant specialising in company transactions, to guide the company on the preparation for sale, before any moves are made to seek out buyers. Calling in advisors after a deal has been struck may mean financial or legal pitfalls that can cause a deal to fail in later stages and the role of the advisory team in this preparatory stage is as important as any work they will undertake in finalising the deal.

Taking your time to get it right and make the business market-ready means that timescales of 12 to 24 months for preparation are not uncommon.

In putting together a detailed exit plan for a limited company, the first question you are likely to be asked is whether you are looking for a share sale or an asset sale, also known as a business sale. The answer may be influenced by personal, financial or legal reasons which can be explored with the specialists, but the final decision will determine the process to be followed and the resulting tax implications for both buyer and seller.

It is worth mentioning before exploring this further, that choosing between these two options will apply only for limited companies, where the company is an entity in its own right.

1. Share sale

The shareholders sell their shares in the company that owns the trade and assets of the business.

A share sale is effectively the clean-break option for the shareholders. The buyer is purchasing the whole company, its assets, liabilities and the business as a going concern. There is no need for new contractual arrangements with employees, suppliers, customers, landlords or others, as the corporate entity will continue in its present form; it is simply that the shareholding has been transferred.

2. Asset sale

The company sells some or all of the assets which comprise the business.

Here the seller is the company itself, rather than the individual shareholders. Only those assets and liabilities identified and agreed to be transferred are involved in the sale. This can cover both tangible assets, such as property, stock or machinery, and intangible assets, such as intellectual property and goodwill.

An asset sale may take place because a seller wants to retain parts of the business that will continue to operate, or be sold elsewhere, or because the buyer wants to cherry-pick and avoid certain company liabilities.

As the business is being transferred to a different corporate entity, third-party contracts with customers and suppliers need to be novated or redrafted; commercial property requires negotiation with the landlord to agree an assignment of the lease and there would have to be employee consultation. A Transfer of

Undertakings (Protection of Employment) Regulations 2006 situation is likely to arise, commonly known as TUPE, where employment rights are protected and transferred to the new owner of the business assets.

A key factor in the decision making between these two routes is the tax position. This is complex and specific to each situation, but generally individual shareholders will be better off in a share sale, with a single tax charge on any capital gains arising (which is likely to be reduced to 10% if entrepreneurs' relief applies). In an asset sale, there is a potential double tax charge, firstly on the company, with corporation tax on the profit made on the sale of assets, and then on the shareholders when they withdraw the sale proceeds from the company.

Whichever of these two routes is finally decided upon, the management team needs to ensure that contracts and policies are all in order, and that any disputes or other issues have been resolved. Once the company is ready to go on the market, a non-disclosure agreement (NDA) for potential buyers should be in place and confidential information must be withheld from any interested parties until the NDA has been signed.

Once a deal has been agreed, buyers should be credit checked and their source of funds validated. If those pass the test, then set out the terms at an early stage of negotiation. The sale price is important, but it is not the only thing that matters. Getting a clear document setting out the heads of agreement, known also as heads of terms, can influence the way and speed the transaction progresses and means everyone knows what is expected of them. Any heads of terms should be reviewed by a solicitor before being signed.

This is likely to include a timescale covering aspects such as when contracts will be sent, how long the buyer has to complete due diligence, through to when exchange of contracts and completion will take place. It should clearly set out what is being sold and what may be specifically excluded. And while a non-refundable deposit is usual on exchange of contracts, it is worth considering a deposit on the signing of the heads of terms, as this can protect against a buyer withdrawing without good reason or failing to meet the timescale.

At each stage, the most important thing is that all members of your advisory team are working with each other in a seamless way throughout the process, as well as directly with you. Where the ground shifts, as it inevitably will, it is important they remain focused on the vision you have for the company sale and work with you to achieve the best possible outcome in changing situations.

If you would like to make your business market-ready and prepare for a share or a business sale, why not call Evangelos Kyveris today.

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