TRANSACTION MANAGEMENT

OHB Consulting
CORPORATE FINANCE ADVISORS

In the last two issues we covered the owners decision to exit from their Business & getting the business ready for sale & in this final article on Business Transition we look at the issues of the Sale itself – Valuation. Sale, Due Diligence & moving on After the Sale itself.

HOW TO ACHIEVE YOUR DESIRED TRANSACTION VALUE

If you are like many owners, this will be the most important deal of your life, because the sale will monetise much of your personal wealth, and liberate value that has been tied up in the business.

The process adopted at this stage depends very much on your transition objectives. If a third party sale is part of your plan, there is a series of activities required to market and sell the business. This typically needs the assistance of a business broker, who is someone with the experience and qualifications to help you with this.

THE SALES MEMORANDUM

The sales memorandum (Information Memorandum/Prospectus) is used to present the business in the best possible light. It is similar to a business plan but written for buyers, and it if contains errors or is misleading the ramifications can be significant. You need professional help with preparing this document.

Selling a business is an exercise in marketing, negotiating and sometimes poker! Certainly having a contest among buyers helps you get the best deal. A good marketing plan and a "switched on" business broker can facilitate this.

Tax plays a big part in this; you need to look at your after tax position. It may be that the deal is structured in a way which is beneficial to you, but is not good or attractive for a buyer.

Other aspects of selling to a third party include warranties, earnouts and vendor finance, which along with the tax considerations make for an interesting negotiating mix. It is important to understand what these various bargaining chips are worth to you, and what they may be worth to the buyer. Creating a win-win can occur.

If you offer something to the other side that they value highly, but which has a low cost to you.

Getting to a binding Memorandum of Understanding or a Letter of Intent is a vital step. In theory, this locks the buyer and seller in, but it is a period of high risk for you as there are usually conditional clauses that still have to be satisfied. If word gets out that you have signed up, then other bidders will quickly drop off and the contest is over.

DUE DILIGENCE

One of the precedent conditions is often due diligence. It is preferable if this takes place with all prospective buyers before an agreement is reached with one party. This can be expensive however, as you may have many parties simultaneously investigating all aspects of your business. One way to deal with this is to set up a data room and give all prospective buyers access. In this case, confidentiality agreements are usually signed, but your business is put on display and this may not suit you.

Given the drawbacks that can attend this process, it is vital that you pass the due diligence process and that the Sales Memorandum discloses all the things that would otherwise allow a buyer to back out.

If the sale is an internal or related party transaction a different course of action is required. For family members coming through the business, management succession is more important than transaction management. Greater flexibility exists in terms of how the deal is structured and the time period involved.

In the case of both third-party and internal transactions, it is likely a "sale for consideration" will occur. This change of title will need legal guidance. Furthermore the event will be of great interest to the revenue authorities, so a tax expert should also be involved.
Shortcuts here can be very costly as a sale contract imposes obligations on the parties, and the tax authorities can return to a transaction many years later and review it in detail. Our advice is to "do it right and sleep easy".

THE SALE CONTRACT

A contract may include warranties made by the vendor, restrains on what the vendor can do after the sale and many other terms and conditions. A lot of value can be added or eroded in the contract and great care and a good commercial lawyer are necessary ingredients.

MOVING ON

Once you have settled the sale and have your money in the bank, a new day dawns. You need a good personal financial plan and perhaps also a life plan to ensure your long term wellbeing. Don't under estimate the emotional transformation you will go through. There are two social events or activities that we commend to those who transition from their business. The first is a farewell and handover - a passing of the baton if you like. This is an important part of getting closure. You can say goodbye to those who have been involved with you and they can farewell you. Of course, it is a great opportunity for new management to be seen to be in place and in charge.

The second activity is to plan some kind of circuit
breaker, ideally a holiday. Take time out and do something you have always wanted to do. Put some distance between yourself and the business - this is an essential part of moving on and important to your wellbeing.

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