WATCH OUT FOR THE EXIT!


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(Tax) plan ahead before selling your business, say Dhana Sabanathan and Robert Botkai of Winckworth Sherwood, in the latest of a series of exclusive articles for Petrol Heads-Up**

Planning to sell your business can be an exhilarating time, with a major focus on negotiating the best commercial deal on exit. However, sometimes the personal tax considerations associated with the sale can be side-lined and useful planning opportunities forgotten. We highlight in this article some of the personal tax considerations you should be thinking about in advance of selling your business.

A sigh of (tax) relief on sale

The largest tax liability for the seller of a business is typically capital gains tax (CGT) on any increase in value of the business since establishment or acquisition, up to the date of sale. If you pay higher rate income tax then you will generally pay 20% on your gains from the sale of your business.

Sellers may be able to claim entrepreneurs' relief (ER) to reduce the tax rate from 20% to 10% on qualifying gains, up to a lifetime limit of £10 million. Recent changes to ER have made it harder to claim on sale of businesses. Broadly, the crucial qualifying conditions that must be met are as follows:

- The seller must hold at least 5% of the voting rights and at least 5% of the ordinary share capital in the trading company for two years before the shares are sold; and
- On the date of a disposal, the seller should be beneficially entitled to 5% of the proceeds in the event of a sale of all of the company's ordinary share capital on that day; or
- They must be entitled to at least 5% of the distributable profits and net assets of the company.

The seller must also be an employee or a director of the company (or one in the same group). Historically, a common planning technique was for entrepreneurs to transfer 5% of their shares to family members, so that they could also benefit from the relief on disposal of their interest. Many petrol businesses are family owned, and while the changes to ER are complex to navigate, with advice, it should still be possible to maximise this relief where family members are involved.

The benefits of re-investing the sale proceeds

If you reinvest your sale proceeds into new business assets then you may be able to claim business asset roll-over relief. This relief lets you defer any CGT payable until sale of the new assets, provided certain conditions are met. For example, if you cease trading as a petrol station business and sell a petrol station site, and within three years you start another business, you can defer the gain on the sale of the petrol station site until the sale of the new business. Depending on the size of the business, a combination of ER and partial roll-over relief could significantly mitigate tax exposure on sale. It is also possible to delay CGT by investing in unquoted shares that qualify under the Enterprise Investment Scheme, or giving away your business to the next generation rather than selling it.

Don't wait till death for death planning

In many cases, shares in privately held trading businesses are exempt from inheritance tax (IHT) as a result of an IHT relief known as Business Property Relief (BPR), provided the donor held the shares throughout the two years

immediately preceding the gift. This means the shares can be gifted or inherited free from inheritance tax for successors. When the shares are sold, BPR is lost and the proceeds become part of your taxable estate. However, if the proceeds of the sale of qualifying assets are reinvested, BPR can continue to apply, without having to wait a further two years. Depending on the quantum of the proceeds received, structuring options to plan for IHT could include making lifetime gifts to children and settling assets into trust. Individuals that are originally from outside the UK may be able to take advantage of more generous tax planning opportunities for succession purposes.

Key take-aways

- The key to exiting your business tax efficiently is to plan ahead.
- The UK tax rules are a complex system to navigate and advice should always be sought when planning a business sale to maximise reliefs.
- Align your tax strategy with personal goals e.g. reinvestment or succession planning.

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