What's involved in selling your business?

Selling your business can be a stressful time and unless you've done it before, it's hard to know what to expect or what's required to get the right result. We've put together the top issues for business owners or investors to maximise their results.

Understand what you are selling and the tax implications

What you are selling and how you are selling it will have quite different tax consequences.

For example, let's say the business is operated through a company structure. If the company sells the assets of the business (e.g., goodwill, equipment, intangible items etc.,) then the immediate tax impact rests with the company. If your intention is then to flow the proceeds of the sale to the shareholders, then there is another taxing point that needs to be understood and managed. Depending on the circumstances there may be options for managing this in a more tax efficient way.

However, if the shareholders are selling their shares in the company, then the tax impact is managed at the shareholder level and dealt with by each of the shareholders.

The overall outcome from a tax and cashflow point of view could be quite different. It's important that you get good advice as soon as you are thinking of selling the business to understand the taxing points triggered by the sale and what options might be available to improve the overall outcome, including the availability of any concessions and the conditions that need to be met to qualify for them.

The GST implications of any sale also need to be established up front. If the business is sold as a going concern, that is, it's 'business as usual' despite the sale, then the sale is generally GST-free. But, to ensure the sale is GST-free the parties have to agree in writing that certain strict conditions have been satisfied. If this issue is not dealt with, the vendor may be left with an unexpected GST liability that will basically come out of the sale proceeds.

Finally, consider the liabilities. For example, if you sell your business but not all of the staff are staying on with the new owners, the vendors will generally be responsible for the cost of redundancies and other employment costs.

Get your house in order

Most purchasers will undertake some form of due diligence on your business. If you understand what the likely purchasers are looking for, you have the opportunity to ensure that your business is positioned the best possible way. This may mean cleaning up your balance sheet or sorting out other parts of the business in advance of the sale. This way, you remove possible objections to the sale and improve your chances of achieving a favourable sale price.

Control the flow of information

During the sale process it's not unusual to be asked for a myriad of information about your business, its performance, and for your financials. Just remember that not all prospective buyers are buyers – many will be looking for market knowledge and intelligence. It's important to cascade information through to prospective buyers as required to limit the potential of over-sharing with competitors. Generally, sensitive information should only be released under due diligence once key terms have been agreed.

Warranties and indemnities

Warranties and indemnities are a standard part of most sales agreements to protect the purchaser against declining performance and significant changes in conditions from what has been declared. It is essential that you understand what you are signing up to even if the chances of the trigger event occurring are slim. This includes limiting the dollar quantum of any indemnity and its time period. In most contracts if you disclose information during the due diligence phase a warranty claim cannot be made against you – there can be an art in disclosure!

Restraints

Restraints are also a common part of a sale of business process particularly where the sale includes goodwill. Restraint clauses prevent you from selling your business then immediately starting a new business or becoming a part of a competitors business using the goodwill you established. Where restraint clauses are involved, it's important to understand how long you are going to be out of the market for.

Parental leave. Where are we up to?

How did paid parental leave get to be so contentious? The current debate is not about parental leave in general; the entitlement to 12 months with a potential for 24 months of unpaid leave with your job guaranteed (or an equivalent position) remains. It's about who pays for paid leave.

According to a recent report, on average across OECD countries, mothers are entitled to just less than 18 weeks of paid maternity leave around childbirth. Almost all OECD countries offer paid maternity leave that lasts at least three months. The United States is the only country to offer no statutory entitlement to paid leave on a national basis. On the flip side, UK mothers can take up to nine months paid maternity leave.

On average, OECD countries offer eight weeks of paid father-specific leave, either through paid paternity leave or paid father-specific parental or home care leave. Nine OECD countries provide no paid father-specific leave at all, and 11 offer two weeks or less.

Most OECD countries provide payments that replace over 50% of previous earnings, with 12 countries offering a mother on average earnings full compensation across the leave period. Payment rates are lowest in Ireland and the United Kingdom, where only around one-third of gross average earnings are replaced by maternity benefits. As a result, despite lengthy paid leave entitlements, full-rate equivalent paid maternity leave in these countries lasts only nine and 12 weeks respectively.

In Australia, paid parental leave is available for up to 18 weeks for eligible parents paid by the Government at the minimum wage. Eligible working dads and partners also get access to two weeks paid leave at the minimum wage.

At the moment, if your employer provides paid parental leave then you can still claim the Government scheme. One is unaffected by the other.

According to the OECD, across the board, Australian mothers receive 42% of their previous earnings while on parental leave. This is largely eligible public sector employees who receive employer funded paid parental leave up to their ordinary rate of pay, and corporates. Of those who receive both employer sponsored paid parental leave and claim the Government's paid parental leave scheme, 60% are employed by the public sector and 40% are corporates.

Reforms currently before Parliament seek to curb the capacity for parents to receive both employer and Government funded parental leave payments instead moving to a 'top up' system. In effect, the reforms remove the capacity for private and public sector parental payments to co-exist. That is, if someone is entitled to paid employer leave of less than 18 weeks, then the Government will top up this payment to reach the maximum 18 week entitlement at the minimum wage. Senate figures reveal that only 6% of women who claimed the Government funded paid parental leave were on salaries above $100,000. The median income of those claiming the scheme was $47,730.

The proposed 1 January 2017 implementation date of the reforms is also contentious, as it would leave women who are currently pregnant in potentially very different circumstances to what they believed when they fell pregnant. However, it is unlikely that this date will be agreed by the Senate.

The reforms also amend how employers interact with paid parental leave. At present, paid parental leave is paid via the employer. Under the reforms, parental leave would be paid by the Government unless the employer opts-in to make the payments.

The reforms are expected to save around $1.2 billion across the forward estimates.

Quote of the month

"We're all custodians now. We all contributed to making Australia what it is."
Aboriginal activist Millie Ingram (Aunty Millie)