Structuring the Sale of a Business – From a Sellers Perspective

December 18, 2018

For many business owners, your business is your most significant asset. When receiving an offer to sell your business whether solicited or unsolicited, you will need to consider how that sale will be structured.

One of the most significant negotiation points when selling a business is whether to sell the assets of the business or the shares of the corporation. Selling shares is simple from the seller's perspective, you sell the shares to the purchaser and receive the proceeds from the sale personally.

Sellers often prefer to sell shares of their corporation rather than the direct assets of the business if they are eligible to claim the Lifetime Capital Gains Exemption (LCGE). In 2018, the LCGE exempts up to $848,252 of capital gains from tax when selling Qualified Small Business Corporation shares (QSBC shares). However, not all shares qualify for the CGE, but with planning, some can be made to qualify.

When selling the assets of your business, the corporation receives the proceeds and you still hold the shares of the corporation after the sale. Although this can seem burdensome as there will be additional steps to get the proceeds from the sale out of the corporation and into your personal hands, it provides a unique tax opportunity to withdraw the funds over time and therefore defer a portion of the taxes to years when you may have lower income, and therefore, pay lower overall taxes.

The timing of when you receive the proceeds can also impact the negotiations and your tax implications. If the proceeds are received over time through a Vendor Take Back Mortgage or other similar arrangement, a reserve may be available to spread the tax liability over a number of years, generally to a maximum five years.

Proper structuring of non-competition clauses, including filing of relevant tax elections, is also important to minimize taxation on a sale.

After selling your business, it is common to continue working for the business for a period of time, in order to assist the new owner with the transition. You will need to consider whether you will act as a consultant or employee to the business, as the tax implications vary.

When the sale is between related parties, such as family succession planning to the next generation, extra care is required to ensure all transactions occur at the fair market value. Otherwise adverse tax consequences could result, including paying tax twice on the sale value!

There are many other negotiating points to be considered and your structuring preference as a seller may be different from the buyer's (more on that in a future article). Whether you are selling your business in the short or long term, your Roth Mosey advisor will be able to provide you with advice regarding structuring the sale and minimizing your tax implications to assist you with the process.

For more information on how we can assist you in structuring the sale of your business, please contact your **Roth Mosey** advisor.

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