nkh

BUSINESS ADVISORS
& ACCOUNTANTS

Selling your Business

Thinking of Selling your Business in the next few years?

Small to medium sized enterprises and family owned businesses must ensure they have a viable strategy to exit the business when the time is right. Although there are various options for exiting a business, more and more we are seeing clients opt for a trade sale. Trade sales can be an effective way for owners to exit the business cleanly and enjoy their retirement without having to give any thought to the business operations during these important years.

Of course, selling a business you have worked so hard to build can be a highly emotional and stressful experience. Negotiating on terms such as the sale price can be difficult, particularly when you have invested so many years in the business. It is therefore, important to engage the services of skilled independent professionals who can assist with these negotiations on your behalf.

…Ideally, a seller should begin preparing the business for sale 2-3 years prior to entering into the sale agreement…

It is critical to obtain timely professional advice, preferably prior to agreeing on terms, to minimise any unintended tax or commercial consequences of selling your business.

Too often sellers fail to obtain 'up front' advice which can mean they do not obtain the maximum value for their business. In our experience, sellers who obtain advice and assistance ahead of entering into the sale contract will achieve the best possible outcome from exiting the business.

KEY ISSUES ASSOCIATED WITH BUSINESS SALE TRANSACTIONS

1. Preparing the business for sale

Ideally, a seller should begin preparing their business for sale 2-3 years prior to entering into the sale agreement. During this time, the seller should take the necessary steps to improve the profitability of the business to ensure that the maximum sale price can be obtained. It may also be necessary to put into place a structure that facilitates a seamless and tax effective exit.

NKH can assist you with getting ready for sale in order to maximise your reward for your business.

It is also important to obtain a valuation of the business. A valuation provides a starting point for sale negotiations and gives the seller an understanding of what the business is worth to an arm's length purchaser.

2. Options for selling your business

Where a business is operated through an entity (be it a company or a trust), there are generally two options for selling the business. Firstly, the business can be sold by the entity selling specific assets of the business (ie stock, plant and equipment, goodwill, etc). Alternatively the entity itself can be sold. This involves selling all of the shares in a company or the units in a unit trust.

Before agreeing on the sale terms, it is critical to compare whether it is preferable for the seller to sell business assets or instead, to dispose of the entity. Understanding the various commercial, legal and taxation 'pros and cons' of each option is critical to the decision. Of course, the wishes of the purchaser must also be considered. Often the framework through which the sale is structured will be a matter that must be negotiated between the parties.

For instance, purchasers are often reluctant to acquire entities as the purchaser will be exposed to any past problems of the business. However there can be significant tax savings to the seller if shares in a company are sold rather than the assets, depending on the particular circumstances of the seller.

Level 2, 100 Railway Road, Subiaco WA 6008
POST: PO Box 8281, Subiaco WA 6008 TEL: 9367 8133 FAX: 9367 8812
WEB: www.nkh.com.au EMAIL: enquiries@nkh.com.au

nkh
BUSINESS ADVISORS
& ACCOUNTANTS

NKH has experience in determining the tax outcomes of an asset sale versus an entity sale. This comparison is key to ensuring the seller maximises his or her after tax cash position following the sale.

3. Legal documentation and framework

It is critical that sellers understand what is being sold and the legal terms of the disposal. It is therefore imperative that seller understand and obtain advice on the implications of the sale contract to them.

For example, business sale contracts often contain warranties and indemnities which require the seller to refund a percentage of the sale price in the event that the purchaser is exposed to a past claim of the business. It is crucial to carefully negotiate the wording of these clauses and the agreed percentages, to ensure the seller is not over exposed.

Further, the agreed sale price for the business may take a number of forms. For example, many purchasers prefer some of the payment to be by way of an agreed lump sum on settlement plus an additional 'earn-out', which may be payable over a number of years only if the business achieves a certain level of profitability.

Earn-outs can be a very effective way of minimising the upfront payment required by the purchaser, if there is any doubt about the future profitability of the business. The commercial and taxation implications of earn-outs should be carefully considered by the seller prior to forming an agreement.

Why choose NKH to assist?

At NKH, we have a dedicated 'Tax and Special Projects' team, the members of which have a broad knowledge of tax jurisdictions and local deal experience.

We offer a range of business sale services to corporate and private equity investors covering all phases of sale transactions.

Our services include:

- 'Pre sale' strategic and business advice
- Business valuation services
- Assistance with sale process negotiations
- Advising the seller on how best to structure a business sale (i.e. asset vs entity)
- Advising on the specific tax outcomes of the sale, including but not limited to income tax, capital gains tax and GST.

Contact details

For more information on how NKH can assist you, please contact:

Emma Barns
Senior Manager Tax & Special Projects

Tel: 9367 8133
Fax: 9367 8812
emma.barns@nkh.com.au
www.nkh.com.au

Lisa Reid
Tax Advisor

Tel: 9367 8133
Fax: 9367 8812
lisa.reid@nkh.com.au
www.nkh.com.au