

Handling negotiations, tax and deal structures

Guide 3

Avondale Business Guides Series

Handling negotiations, tax and deal structures

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This Guide is not intended to be definitive, and the accuracy of its contents can not be guaranteed. Professional legal and financial advice from your regulated advisors should be taken on all aspects of transactions.

Introduction

There are a myriad of books on negotiation and it is a skill best learnt over decades however there are a number of processes, around the negotiations and rules that should be followed in agreeing a business sale.

Pre negotiation 'presenting the business'

Consideration should be given to how much information is released between the parties. This is best managed on a phased basis. A confidential sales letter or sales details would be the first document to be sent to any prospective purchaser - this should only be a taster 'dangling the carrot' of the company together with a request that they complete and sign a 'non-disclosure agreement' for a further more detailed information memorandum on the company for sale.

This is a document that needs to stand out from the numerous proposals active purchasers will be receiving. Therefore it has to be made as easy as possible for any potential purchaser to decide to buy this business. So when preparing an information memorandum remember this is a crucial document that must be prepared and polished long before contacting any interested parties as it can be the main cause for a purchaser to determine whether they want to buy the business or not and also how much they are prepared to pay.

It must be an accurate and true documentation disclosing any material facts. A discovery of anything during the due diligence process could undermine the buyer's confidence in you and the worst case scenario it will most definitely damage their trust in seller's honesty which may lead to a collapse in negotiations later on. There is a balance between presenting the company positively and in a way that will attract buyers, while taking the opportunity to present main weaknesses and risks of the business in its best light.

'Honesty is the best policy'

Typical contents of the information memorandum

- Business Background
- Market
- Operations including schedule of employees
- Assets
- List of trademarks and patents
- Detailed lists of land and properties and any other major items
- Up to date financial information including up to date management records, ratios and forecasts.

As a golden rule the information memorandum must be easy to read and follow giving a well-directed account of the positive aspects of the business without boring its reader.

The Right Approach for Buyers

Many buyers see their approach to the sale as adversarial and the process is one where they have to win but beware of being too aggressive. This approach can be very dangerous particularly with the purchase of owner managed businesses. More often than not purchasers will rely on the seller's goodwill after purchase more than they realise.

Find out quickly what is driving the seller and why they really want to sell:

- is it personal circumstances
- is something bad about to happen to the business
- how influential is their partner
- how key is their role
- are they serious about selling or just testing the market
- what are their expectation after sale

If it is an owner manager selling it is highly likely that they will have an emotional connection to the enterprise and will seek recognition for their hard work in developing the business. Be aware of this and respect it.

Aim to keep the negotiations simple and honest and avoid arrogance. Listen to good advice from others but be prepared to make the final decision yourself. It is important to use the research process to determine the value of the business to you. If you can't do the deal for that price – walk away.

Look for potential

When considering any business for purchase, the biggest factor influencing your decision should be the potential for future profits and your own or your organisation's ability to take the company forward. We all understand the difference between a profit and a loss, but what about hidden losses? These are profits that the business should have made for instance are there too many staff, are there other routes to market? Often business managers become so focussed on the day to day issues they rarely have the chance to stand back and look at the bigger picture objectively. You have that chance and should be able to identify different routes to exploit for profit that have been missed.

The following questions should be a pre-requisite to every acquisition:

Staff:

- What motivates them?
- What ideas for improvement do they have?
- What training would be appropriate to improve productivity?
- What decision could be made right now, to make their jobs easier?

Customers:

- Why do our current customers use us?
- Can we offer anything extra to them?
- Can/should our prices be raised?

Operations:

- What is the least efficient process in the company?
- How effective are the IT systems

Marketing:

- Does the company have an effective web presence?
- What advantage do they have over competitors?
- What opportunity are they under exploiting?

Have they a clear market niche?

Are they focused?

Should they move away from certain types of customer?

What free advertising resources can we take advantage of?

Are there any synergistic partnerships we could make?

Finance:

How can cash flow be improved?

Should I consider factoring?

Where are they wasting money?

The Viewing Meeting

It is important that sellers consider how they approach potential purchasers. Initial impressions are formed within the first 10 seconds! Here is a brief shortlist of ideas and reminders for sellers that might be useful:

Actions for sellers that should ensure a sale

- Be prepared with all likely information required to hand
- Be objective (buyers prefer facts rather than beliefs)
- Be clear on what makes your business valuable
- Promote your niche or unique selling point
- Present the quality of your business and its' systems
- Communicate the investments you have made (not your time)
- Promote an even spread of risk with your clients
- Present realistic ideas on what could be done with the business
- Remember! You are selling your business, not yourself (Buyers need to know the business works without you)
- Be aware of confidentiality (If you do not want to give information don't say no. Say not yet!)
- Do not respond to discussions on terms at an early stage (Do not undermine your negotiation position)
- Begin in a friendly way (you want to sell to this purchaser!)
- Keep it simple, direct, honest and factual
- Listen to good advice particularly from your advisors

Developing and handling competitive environments

A competitive environment of more than one buyer is extremely helpful in determining the true value of the business. They can also be used to drive the price/maximise the deal. The key to exploiting this position is research and business intelligence which will lead you to contact as many serious parties as you can.

Many agents talk about controlled auctions where you request bids by a prescribed dates. Those whose initial bids are acceptable are allowed access to management and records and told a higher offer is expected with an invitation to make their 'best offer'. This can be time consuming and at worst make the deal go at the slowest pace. The idea of bids is fine to attract sellers but in reality is it practical? The alternative is the in isolation technique.

Handling a competitive environment with 'in isolation' technique

- We recommend considering and negotiating each offer in isolation. This is very important, and avoids the grass may be greener on the next offer /viewing syndrome.
- Why in isolation? It is human nature to ask 'what if'. i.e. what if the next buyer might pay more..... The problem with this is where do you draw the line? By considering each offer in isolation you are able to examine whether the deal on the table would work.
- You can even 'in principle' accept (verbally) the in isolation offer, with the very clear caveat that you will be advising other parties that we have an offer that would be acceptable with the invitation to match it. This is still competitive and better still creates momentum.
- Negotiating and 'in principle' accepting an offer in isolation subject to notifying other parties allows you to go at the pace of the fastest party not having to get round to speak to everyone, wait for all bids to come in etc.
- The problem with waiting for all bids is that you go at the pace of the slowest (often the least motivated buyer). This frustrates the fast serious parties. They lose interest and the deal never happens.
- The isolation tactic also reminds the seller that it is important to go for the best all round deal, not necessarily the highest. The best competitor for any buyer is the vendor. Buyers know vendors may choose to keep a business. This is a far better message to send, and ones sellers may accept.

Avoid the blatant 'up your bid' confrontations and work with the buyer to build a deal if you can. This spirit works and buyers often end up paying more because they feel you have worked to create a consensus rather than played against them.

Which offer to accept? (Which horse to back?)

The decision on which offer to accept may depend on a number of variables. It may be:

- the highest offer
- the greatest amount payable on completion
- the best structure
- the best consultancy/ongoing package
- the one that retains the integrity of the business after sale

Is the buyer serious?

- Have they put the deal in writing?
- Are they approaching the deal quickly, sensibly, clearly and simply?
- Are they fair business like and flexible?
- Do they have a strong demonstrable (on paper) ability to finance the deal?

There may be occasions when two buyers offer similar terms and appear in similar positions. In this case either insist on a deposit prior to giving exclusivity, or allow the buyers to progress and only grant exclusivity if a clear winner in progress, or terms appears. Always keep both buyers informed transparently (apart from names) of the position.

Managing the legal process

Good lawyers are vital to ensure any successful business sale or acquisition, but how do you choose and manage them? Buyers and sellers often believe that once they have agreed the deal their lawyers can take care of everything. This is not correct. The lawyers have to work through the documentation carefully and decisions need to be made by you throughout the process.

For many companies or individuals buying or selling a business is a new experience and consequently they rely heavily on their legal representation. Never forget however, that a lawyer is there as an advisor not to lead or make decisions for you. All parties should remember that there are usually opposing positions on the sale contract, particularly regarding which warranties and indemnities are appropriate. These are the guarantees the buyer will seek to protect and provide possible recourse from the vendor. Compromises will be required on both sides.

As legal negotiations can be complex both buyer and seller should secure the best possible legal advice early on. Choose a lawyer who:

- ▶ specialises in the legal aspects of buying and selling companies
- ▶ understands your industry
- ▶ has a demonstrable track record of completing transactions of your type
- ▶ offers effective service first, competitive fees second.
- ▶ is able to commit an experienced Partner with the time and resources to lead the deal in the timescale you require
- ▶ you can work with and is approachable and emphatic to your needs.
- ▶ will keep you informed at every step

Deal structures

Business sales, mergers and acquisitions are rarely structured all in cash. For a number of reasons including tax, financing, buyer hedging and maximisation of value, deals can be structured in a variety of way and we have focussed on some of the more common ones below:

1. Cash
2. Deferred payments
3. Retentions
4. Performance related payments (PRP)
5. Earn Outs
6. Elevator Deals
7. Shares
8. Mergers

Cash in Full on Completion

“All Cash” on completion deals can and often are achieved. Buyers are happy as they have immediate ownership, and sellers are happy as they have a minimum risk on the payment. “All Cash” is ideal as a seller if you are retiring, the business is not dependent on you, and you categorically want an immediate exit. However, it may not be the best way to maximise the value. If the business is dependent on the vendor or has other high risks associated, one key contract or supplier for example, it may not even be achievable as buyers seek to hedge their handover risk.

Deferred payment

Deferred payments are where a percentage of the price is paid to the vendor on a fixed basis over a fixed period of time, usually with interest. The deferred part of the deal is effectively a vendor loan and is usually put in place to help the buyer finance the purchase, particularly if banks are unsupportive. It may also enable some of the price to be paid out of future profits. The purchase price is defined from the outset, a proportion of the price is payable on completion and the remainder is payable over a period of time. In a ‘heads of terms’ (the document that sets out an agreed deal) it might appear as follows:

Item	Amount	Payable	Note
Initial payment	£1,000,000	On completion	For the purchase of 100% of the share capital of the business.
Deferred payments	£500,000	Payable over 2 years following completion	8 equal quarterly payments of £62,500 will be made. The first payment of £62,500 will be made 3 months after completion, and a further quarterly payment of £62,500 will be made every quarter up to and including 24 months after completion.
Total	£1,500,000		

When should a seller accept a deferred payment structure? ONLY IF:

- They are happy with the value of the initial payment if in a ‘worst case scenario’ that was all they were to receive
- Personal guarantees are given on the deferred amount, preferably bank guarantees (if they are available could you get the cash instead?)
- Some form of security in the form of a debenture or additional security from the buyers freehold

Retention

Retentions are also a form of deferred payment. The idea is that the purchaser pays all the money on completion but retains a proportion, in an Escrow account held by the vendor’s solicitors, in lieu of certain events. It may be just whilst the final net asset value of a company is calculated at completion, or in lieu of a contract being renewed. Retentions work well because sellers can see their money, but buyers do have a means of straight forward claw back in certain pre-defined eventualities if they need it.

Performance Related Payments (PRP)

An initial payment is made on completion and then secondary performance related payments are made subject to certain performance caveats. These are often used to help:

- The buyer ‘hedge’ risks and finance the deal from future profits
- The seller ‘maximise’ the deal by linking it to future expected growth.

Example 1 PRP: In the first example we have assumed that the business being purchased has historically had a turnover of circa £2,000,000 per annum, and that the PRP is going to be linked to the business continuing at this level.

Item	Amount	Payable	Note
Initial payment	£1,000,000	On completion	For the purchase of 100% of the share capital of the business.
PRP	£500,000 (estimated)	Payable over 2 years following completion	8 equal quarterly payments will be made commencing 3 months after completion, and continuing every quarter up to and including 24 months after completion. Each quarterly payment will be calculated as 12.5% of the turnover achieved in the quarter immediately preceding each payment.
Target	£1,500,000		

The rationale behind this is that the business turns over £2 million per annum, therefore should turn over £4 million in the two years following completion. The target PRP is £500,000, which is 12.5% of the expected turnover over the two year period. If the business under performs the seller will receive less than the target price, but if the business exceeds its targets the seller will receive more than the target price. Sometimes upper and/or lower limits are imposed on such deals, and sometimes there is a minimum level at which the business must perform, and if it fails to do so no PRP is made.

Example 2 PRP: In the second example below, the business has a contract with a client that contributes a significant amount to the business’s turnover. We have assumed that the contract is renewed annually:

Item	Amount	Payable	Note
Initial payment	£1,000,000	On completion	For the purchase of 100% of the share capital of the business.
PRP	£500,000 (conditional)	Estimated 6 months after completion	The business currently has a one year contract to supply goods to “ABC Group Ltd.” which is due to expire approximately 6 months after completion. If the business is successful in winning a renewal of this contract a PRP of £500,000 will be made on renewal of the contract.
Target	£1,500,000		

When should a seller accept a Performance Related Payment? ONLY IF:

- The operation can be clearly ring fenced as a stand alone venture, enabling the policing of performance so the value of the payment due can be checked
- Access of the company’s records can be given to the seller so they can ‘police’ the payments
- The buyer will issue statements regarding the payments
- Guarantees / security on the payment is available (as with deferred payments section 2 above)
- The performance caveat looks achievable based on forecasts. Is it based on current performance or growth?
- The PRP has been approached with caution. Who defines the profit and how? Once the business is out of the seller’s hands, can they control costs?

Earn Outs

These are effectively performance related payments where the seller is expected to stay and work to achieve the PRP through that work on a service contract. The idea is that the vendor has a financial incentive to help make a success of the business or the larger organisation after sale.

Elevator Deals

Elevator deals are for ambitious sellers and can consequently be called ‘cash in some of your chips and keep playing.’ They provide a mechanism to link the purchase price of a business to its potential future value or profits. An ongoing involvement in the business is required by the seller in order to drive and ‘elevate’ the value and profitability going forward. By retaining shares in their business or by taking shares from the buyer, sellers have the potential to truly maximise the overall value of the sale transaction.

Aren’t elevator deals mergers?

No, because in the majority of deals a controlling interest changes hands. Many business owners would consider a merger but in reality a good one is hard to come by due to issues of control. One party will normally quite rightly want control, and the chances of exact equals meeting are hard. Let’s face it; it’s very difficult to run a business by committee, however democratic the organisation is. Ultimately the buck has to stop somewhere and for truly effective visionary growth someone has to be leading, calling the shots.

Who do elevator deals work well for?

- Organisations with underdeveloped profits as a result of youth, lack of investment capital or where profits are being used for expansion. Consequently if an outright sale is sought these companies will be under valued by the market.
- Businesses with a strong track record of growth and with good future potential.
- Young ambitious sellers with more to give who are willing to stay in the business and maximise their future potential.
- Companies where sustainability as an ‘independent’ is questionable due to lack of capital to invest or in a fast moving market.
- Sellers where the fun of the start up has faded and they want a new challenge.

How does the buyer benefit?

- Getting in early (possibly cheaper) before the potential of the seller’s company is realised.
- By helping increase the seller’s chance of realising potential.
- Through possible economies of scale between the combined companies helping both businesses fulfil their future value and profitability after the deal.
- By having a controlling interest after an acquisition with the synergies of $1+1 = 3$, that is the creation of a larger company with greater profits. Possibly even a size of company that may leapfrog the multiples; usually the bigger the profit the bigger the profit multiple used in valuation. Ultimately this leads to larger profits and greater shareholder value.
- By locking in the seller’s employment the chance of maintaining growth momentum is increased.
- By having the controlling interest. Mergers are really only a ‘myth’; there is usually a lead party.

What are the typical characteristics of an elevator deal?

(A typical elevator deal will usually have at least some of the following characteristics)

- A price linked to the future profits of the business not past profits and possibly linked to the future capital value of the business in the form of a shareholding.
- A purchase in the region of 50% of the company enabling the vendor to ‘bank a bit’ now.
- The vendor is offered a percentage in the buyer’s business or NEWCO formed. Usually there will be a plan again for a future exit to liquidate this minority shareholding, hopefully at a grown value, enabling the seller ‘to elevate’ a further capital sum.

- A good buyer / seller synergy makes the 'elevation' on offer of 1+1 = 3 appear achievable. The idea is that the two together will not only make more money, but potentially be worth more combined than the sum of the two individual parts.
- Ideally the deal will help 'the seller' realise his potential by taking away the headache of running the business (Finance/HR) so they can grow it on their combined core strengths.
- The seller retains an active role in the business, probably as MD or Development Director enabling them to contribute to the growth and profitability of the business in the mid term.
- A good solid service contract on commercial terms (usually salaried with car, pension, healthcare) being offered to the seller. A new employment agreement will be put in place with some entrenched rights so he cannot be easily dismissed.
- A typical elevation may be the proposed 'float' of the sellers and buyers combined business in the future.

When should a seller accept an elevator deal? ONLY IF:

- They are happy that the 'upfront cash' payable on completion goes a good way to the current value of their business.
- They know that the shares or performance payments are 'on risk'. For instance there may be a 50/50 chance of achieving value. In Roulette - Red has a 48% chance of winning. Remember a shareholding is only as valuable as the willingness of a third party to pay fair value for those shares.
- They like the buyer and want to get involved; truly believing the strategy is realistic. The seller can relate to the buyer and the buyer's philosophy. Do the cultures fit? The question to ask is "Can I work with this guy during the good and the bad times". As part of this understanding the seller will need to understand that the target company is no longer solely his and he will need to work more collaboratively, being prepared to involve others. "How will I deal with a board meeting where my wishes may not carry the day?" On the other side of the coin, the buyer will also have to get used to the seller being involved in his business.
- The end game is thought through. How will you realise the future value of your holding? What are the realistic chances of a successful trade sale or floatation? Have you talked about the buyer's exit plans?
- They are prepared to work in the business for a few more years – "it's not retirement yet".
- They recognise their shareholding is today 'on risk' and they are willing to bank a bit now and take the remainder 'on risk' for the potential of maybe doubling their money again.
- They can explain their 'on risk' perception to their Lawyers.
- The shares in the newco or buyers company are enhanced by a quality shareholders agreement with caveats that:
 - Value the shares pro-rata
 - Offer first refusal to 'buy each other out' either on a voluntary transfer or a deemed transfer (for example on death and bankruptcy or ceasing to be an employee)
 - Cross options if the seller dies ensuring the estate benefits from cash not a minority shareholding. To ensure that the company or the other shareholder has the cash to acquire a deceased's shareholding it may be appropriate for a life policy to be put in place.
 - A seat on the Board to reflect the shareholding
 - Agreed minority shareholding protection to ensure that the minority shareholder has rights of veto over certain fundamental matters.
- The minimum net asset value caveats are agreed in advance as protection if they are accepting shares in the buyer's company.

Elevator Deal Examples

Example 1: A fast track company is valued on current profits today at £1.2 million. This is because the profits are being used to fund growth. An Elevator deal is agreed with a buyer seeking an AIMS float in 2 years:

£1,000,000	On completion.	Cash and therefore secure.
£800,000	Preference shares	Preference shares with interest in 2 years. A preference share is secured by the company, but of course if all goes badly in the company they are worthless and impossible to redeem. Effectively this is a 2 years 'interest only' ON RISK loan to the buyer. This could be loan notes or a performance related payment on future profits.
£150,000	5% minority Shareholding with good shareholders agreement	5% at today's value is estimated to be £150,000 but of course shares can go up as well as down so this is ON RISK in order to hopefully be worth double the money or more (possibly even £500,000 after a float?).
£100,000	Salary plus Pension, car and Healthcare	

Example 2: A profitable technology business is currently valued at say £750,000 on profits, however it is heavily dependent on the vendor and therefore very hard to realise this value. In addition the market is moving quickly with the cost of 'development' becoming higher and as such hard for the business to stay independent and sustain revenue streams.

£250,000	On completion.	Cash and therefore secure.
Target £250,000 +	20% minority Shareholding with good shareholders agreement	20% at today's value is estimated at £250,000 but of course shares can go up as well as down so this is ON RISK in order to hopefully be worth double the money or more (possibly even £500,000 after a float?). This is agreed subject to the buyers having a min net asset of £500,000.
£100,000	Salary + Pension, car and Healthcare	

'Elevator' Summary

"Cash some of your Chips and Keep on Playing" - Elevator deals provide sellers with the opportunity to bank half their money now 'in the Casino' perhaps paying the mortgage off or buying basic financial independence (the ability to cease work on a modest lifestyle). With the other half they continue to 'Gamble' with the aim of a big win and a potential to double this half again. Both parties need to enter into the arrangement with their eyes open, with similar objectives and end games. Through teamwork with the buyer, the seller may get back the job back they enjoyed - developing the trade, rather than working on the business (accounts/HR and finances). The seller enjoys a new journey, having secured a future for the business and banking a base line. An interesting new concept.....

Shares

We have already seen in Elevator deals how some buyers and sellers will offer and accept shares (usually a minority shareholding) in some transactions despite the risks involved for either side. Some buyers may also just offer shares as a means to avoid using cash. These are in a way a form of deferred payments. In a Private Company in an illiquid market sellers should approach these shareholdings with great caution. How do you value minority shareholdings and how do you sell them?

Shares in Corporation floated on the stock market Public Limited Companies (PLC's) are closer to cash and may have an interest to sellers. After all subject to orderly market restrictions that will normally be placed on them, there is a liquid market which is Public thus enabling their sale. Some Corporate Buyers particularly of small Plc's will have to offer shares in order to help them raise funding from Institutional Investors. The idea is they can send the signal to the markets that the vendors are in on their plans, sharing the risks and prepared to help them; a key message for institutional investors to be prepared to offer funding. Don't forget the true value of the shares is the quoted price, less selling costs, on the day they can be sold, not the day they are received at completion. Shares can go down as well as up.

Mergers

Parties may seek a merger. A merger is a combination of two or more businesses on an equal footing that result in the creation of a new reporting entity. The shareholders of the combining entities mutually share the risks and rewards of the new entity. In the SME market mergers are rare, as finding 2 companies with a shared vision and cultures that can be easily integrated often leads to the challenge of one party wanting a controlling share. This often stops these deals completing. Mergers are more likely to occur and are in fact more common in PLC's where shareholders are less attached both directly and emotionally to the running of the business. (NB: Avondale Group will not act in the sale and purchase of minority shareholdings)

Tax

Tax considerations when selling a company are complex but need to be understood as they have a huge bearing on the sale and the amount of cash you will either pay or come away with. Ideally planning should take place before signing heads of agreement. Tax planning undertaken after signing heads of agreement is still possible, but the vendor's room for manoeuvre can be more restricted.

There are various ways in which tax charges can be mitigated, or even eliminated. Here are some examples of the things that vendors might need to look at:-

- Be clear about what you are selling first. If you own a company you can either sell the shares of the company or alternatively the business and trading assets within it. A vendor would typically wish to sell his shares to minimise the tax charge on sale, and a purchaser might well prefer to buy the business to gain accelerated tax relief's going forwards. However, there can be occasions when the vendor might consider selling the business instead of the shares but this would normally depend upon his future trading intentions. This can be a serious point of contention in the early part of negotiations with a purchaser, so it is important for the vendor to be clear about exactly what it is he wants to sell before negotiations start.
- Check your entitlement to Entrepreneurs relief which reduces the 18% Capital Gains Tax to 10% on the first £1 million capital gain.
- Where a trading subsidiary of a group is being sold by its parent company look to see whether the transaction would qualify for substantial shareholdings exemption (SSE). If available SSE can reduce the tax charge to £Nil. Advance rulings

on the availability of the SSE may be obtained from HMRC. Once again submission of an early application is strongly recommended to avoid last minute delays and disappointments, and to assist negotiations.

- Look to see whether pre sale pension planning could be done to extract surplus corporate funds at Nil tax cost. It would also be important to involve a suitably qualified Pensions Consultant to advise on the pensions aspects of this planning.
- Where a deal is likely to be struck with a significant amount of the consideration to be paid as an “earn-out” or on a deferred payment basis, look at the ways this could be structured most tax effectively. It is often better to structure the earn-out using loan notes instead of deferred cash so as to defer or reduce the overall tax charge when the earn-out consideration is received.
- Where an earn-out is being paid in the form of shares or loan notes and could be linked to future employment it is imperative that advance tax clearances and assurances are sought to ensure that the non-cash elements of a deal will not be subject to capital gains tax or employment taxes. Failure to obtain these could expose both parties to the deal to unwanted tax consequences. You should allow at least 4 weeks prior to the expected target date to obtain these clearances so as not to hold up the completion of a deal.
- Some vendors might be in a position to consider permanent or temporary emigration from the UK shortly before disposal of the business. UK tax can sometimes be eliminated entirely by the vendor becoming non-UK resident in the tax year before disposal. At the time of writing Dubai is tax exempt.
- Consider the timing of the transaction. Where transactions take place close to a tax or accounting year end there may be scope for deferring exchange of contracts with the purchaser until after the year end, thus giving the vendor another 12 months to pay any tax arising. Alternatively, a vendor might be keen to bring a transaction into an earlier tax accounting period to utilise losses that might not otherwise be available in a later period. The importance of these deadlines should be made clear to the vendor and his team of advisers before negotiations with prospective purchasers start.
- Consider passing the shares either directly to family members or into family trusts in advance of the sale to utilise the annual exemptions lower and basic rate tax bands of these individuals and trusts, and also to assist the passing of wealth down to the next generation as part of a wider Inheritance Tax mitigation planning. The recent changes in trust tax law should also be carefully considered where shares are already held in trust or the use of trusts is being contemplated.
- Consider the tax issues that may be important to the purchaser of the business as well. There can be significant opportunities to “concede” tax saving points to a purchaser, which actually cost the vendor nothing. By understanding the purchaser’s tax position you can often increase the attractiveness of a deal to the purchaser, or you can use it as a means of achieving the price you want for your shares or business.

In conclusion, both buyer and seller should take detailed tax advice early on in the process.

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