

Selling a Business: Shares or Assets

The client had been approached to sell her company; the purchasers indicating their willingness to purchase either the business or the individual's shareholding. However, they did indicate that they would expect a significant discount on the purchase of the shares due to the loss of relief on the acquisition of the business' goodwill. The vendor knew how much money she wanted, net of tax, from the sale.

The tax consequences of each route were explained to the client. A detailed spreadsheet was prepared, showing how much tax would be paid by the company and/or the individual for each proposed option and establishing the net proceeds after tax for a series of different sale prices. A schedule was also prepared showing the tax relief available to the purchaser, thus demonstrating the true loss of tax to them.

The figures enabled the client to enter negotiations with the purchaser with a full understanding of the implications of what was being discussed. A purchase was enabled where the vendor achieved the desired proceeds and the purchaser was happy that they had achieved a fair price.

Company reconstruction

A trading company with minority shareholders, all of whom were employees of the main company, also had a trading subsidiary with a new business venture in it. The majority shareholders wished to demerge the trading subsidiary as they felt the minority shareholders had no interest in the new venture and should not be allowed to benefit from the potential growth in value of this company.

The situation was reviewed and it was recommended that a statutory demerger of the shares in the subsidiary should be undertaken, such that no tax charge arose on the distribution of those shares in the hands of the shareholders. This was possible because the distribution was covered by the substantial shareholdings exemption so no tax charge arose in the parent company. Although this meant that the minority shareholders in the parent company then had a stake in the old subsidiary, these shares were then repurchased by the company. Clearances were prepared and subsequently given by the Inland Revenue.

SCO investigation: residency

I was approached to assist with a SCO enquiry where it was being argued that a non-domiciled individual was resident and ordinarily resident in the United Kingdom. This would have meant he was taxable on significant worldwide earnings, with the associated National Insurance liabilities. The main thrust of the argument was that he appeared to have no residency for tax purposes in any jurisdiction due to his nomadic lifestyle and because the country with which he had the closest ties was the UK, then he should be treated as resident here.

A review of the underlying information established that he should not be regarded as resident in the UK, since he simply did not satisfy any of the published criteria for this to apply. I attended a meeting on his behalf with the SCO investigators when the arguments were presented at some length. The investigation was subsequently closed down with additions only in relation to minor irregularities.

Inland Revenue enquiry

The Inland Revenue were enquiring into the business of a childcare nursery; the enquiry had been ongoing for two years. The Inspector had undertaken a business economics exercise using data collected in relation to other nurseries in the area as well as general assumptions about the business. This demonstrated to him that there were additions of some £20,000 in the year of enquiry which he was proposing to apply back to the commencement of the business. The settlement sought was therefore significant when including the interest and penalties.

The business economics exercise was reviewed. Not only were there errors in the actual numerical calculation but the assumptions made could not be supported by reference to the particular business. Discussions with the taxpayer identified a further argument in his favour; the business was being run by a manager on his behalf and he would have no opportunity to extract the level of money that the Inspector was contending he had extracted. I attended a meeting with the Inspector and the taxpayer. After a lengthy argument, the Inspector agreed to settle the investigation with only minor technical additions and no penalties. The taxpayer stated afterwards that my performance in the meeting was 'awesome'!