Tax Planning Strategies for Selling Your Business – Part 1

Getting Your Arms around the State of Affairs and Exploring Best Outcomes

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One of the best ways to increase and preserve your family's wealth is smart tax planning. Taxes often tend to be one of the most important negotiating points. With U.S. tax rates potentially on the rise, sound tax planning ***now*** can help you structure your ownership stakes in a way that increases your after-tax proceeds when you sell your business.

Best Planning Practices

Consider these techniques to maximize your wealth and minimize taxes:

- **Determine your long-term, overall family wealth goals, objectives and wishes**. In many family businesses, various family members actively work in the business while others are passive owners – but owners nonetheless. Different family members may have different views on business matters, life priorities, etc. Some owners may want to pass some of their wealth to future generations. Some family members may want to gift some of their ownership to a charitable organization. One family member might have "special needs" which could lead to setting up a trust to provide living expenses for that person. Needs, wants and wishes typically vary by family member and can complicate a sale. While not always easy, holding candid conversations is likely to lead to sound planning which can maximize the benefit to all the owners and their heirs.

- **Clarify who owns what.** In many privately held and especially family-owned and operated businesses, documentation governing ownership is sometimes nonexistent or outdated. In certain cases, some family members have "handshake" deals, "profits interests" or cash bonus arrangements, but not formal legal ownership. Different deals and ambiguities can cause conflict and strife when management contemplates a sale. In addition, ambiguities and gaps in ownership and documentation may result in conflict, especially in light of a sale of the company, a lower sale price and potentially a failed sale. Review the legal documentation relating to ownership and beneficial interests and employment agreements and other key contracts. Be sure to address, clarify and tighten any "loose" terms and conditions.

- **Develop a succession plan or framework for succession**. When the company transitions to the buyers, some family members may want to continue working in the new organization while others may want to retire or join another company. This may impact the structure of a sale of the company and the selling price. For example, a buyer may want to retain a key executive to help realize the buyer's growth plans. Some of the current owners who want to join the acquirer may want to swap their ownership interest in the existing company into equity in the buyer company. This goal is likely to impact the structure of a purchase and sale.

- **Update your organization chart**. An organization chart shows the parent company and its owners and their ownership stake, as well as the operating subsidiaries and which entities and individuals own stakes in the subsidiaries. The organizational chart should include the form of entity, e.g., corporation, S-Corporation (S-Corp.), partnership, LLC, etc., as well as owners and their ownership percentages. This will help you and your professional advisors devise a plan.

- **Update the company's record of assets and liabilities**. This information provides the detail behind the company's financial statements. Supporting schedules including fixed asset ledgers, intellectual property, etc. can help you crystallize the assets your company owns and its obligations.

- **Get a handle on current and historical tax filings to ensure smooth tax due diligence review by the buyer.** Many deals fail as a consequence of the issues that surface during due diligence (especially tax due diligence). It is sometimes advisable for the sellers to conduct due diligence on their company ***before*** the buyers get involved. This approach can proactively identify gaps and resolve any issues so that when the time comes for the buy-side to get involved, the due diligence process is seamless and not causing delays or issues.

- **Get a handle on the tax basis relating to your company's assets and liabilities and the owners' tax basis in their ownership interest**. This will help you create a more tax advantageous structure to sell your company and minimize your tax burden.

Conclusion

Thoughtful tax, trust and estate planning, as well as business succession strategies, provide the greatest opportunity to maximize legacy economic wealth for business owners and their families.

Contact Us

PKF O'Connor Davies can assist with tax planning, due diligence and valuation relating to selling your business, as well as provide any needed accounting, audit, tax compliance and advisory services.

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