



LOCKHART
business
advisors



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

... Advising for Your Prosperity ...

What's involved in selling your business?



Selling your business can be a stressful time and unless you've done it before, it's hard to know what to expect or what's required to get the right result. We've put together the top issues for business owners or investors to maximise their results.

Tax

Understand what you are selling and the tax implications. What you are selling and how you are selling it will have quite different tax consequences.

For example, let's say the business is operated through a company structure. If the company sells the assets of the business (e.g., goodwill, equipment, intangible items etc.) then the immediate tax impact rests with the company. If your intention is then to flow the proceeds of the sale to the shareholders, then there is another taxing point that needs to be understood and managed. Depending on the circumstances there may be options for managing this in a more tax efficient way.

However, if the shareholders are selling their shares in the company, then the tax impact is managed at the shareholder level and dealt with by each of the shareholders.

The overall outcome from a tax and cash flow point of view could be quite different. It's important that you get good advice as soon as you are thinking of selling the business to understand the taxing points triggered by the sale and what options might be available to improve the overall outcome, including the availability of any concessions and the conditions that need to be met to qualify for them.

The GST implications of any sale also need to be established up front. If the business is sold as a going concern, that is, it's 'business as usual' despite the sale, then the sale is generally GST-free. But, to ensure the sale is GST-free the parties have to agree in

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writing that certain strict conditions have been satisfied. If this issue is not dealt with, the vendor may be left with an unexpected GST liability that will basically come out of the sale proceeds.

Finally, consider the liabilities. For example, if you sell your business but not all of the staff are staying on with the new owners, the vendors will generally be responsible for the cost of redundancies and other employment costs.

Get your house in order

Most purchasers will undertake some form of due diligence on your business. If you understand what the likely purchasers are looking for, you have the opportunity to ensure that your business is positioned the best possible way. This may mean cleaning up your balance sheet or sorting out other parts of the business in advance of the sale. This way, you remove possible objections to the sale and improve your chances of achieving a favourable sale price.

Control the flow of information

During the sale process it's not unusual to be asked for a myriad of information about your business, its performance, and for your financials. Just remember that not all prospective buyers are buyers – many will be looking for market knowledge and intelligence. It's important to cascade information through to prospective buyers as required to limit the potential of over-sharing with competitors. Generally, sensitive information should only be released under due diligence once key terms have been agreed.

Warranties and indemnities

Warranties and indemnities are a standard part of most sales agreements to protect the purchaser against declining performance and significant changes in conditions from what has been declared. It is essential that you understand what you are signing up to even if the chances of the trigger event occurring are slim. This includes limiting the dollar quantum of any indemnity and its time period. In most contracts if you disclose information during the due diligence phase a warranty claim cannot be made against you – there can be an art in disclosure!

Restraints

Restraints are also a common part of a sale of business process particularly where the sale includes goodwill. Restraint clauses prevent you from selling your business then immediately starting a new business or becoming a part of a competitors business using the goodwill you established. Where restraint clauses are involved, it's important to understand how long you are going to be out of the market for.

At LOCKHART Business Advisors, we strive to make the daunting task of selling your business a less painful experience.

Quote of the month

"We're all custodians now. We all contributed to making Australia what it is."

Aboriginal activist Millie Ingram (Aunty Millie)

Please Note: The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Audit Shield Summary



Better safe than sorry . . . *Are you prepared?*

It is no secret that the Australian Government and the Australian Taxation Office (ATO) will go to any lengths to raise revenue. One way of reaching this goal is by pursuing audit, enquiry, investigation or review activities in regards to lodgements for businesses, taxpayers and Self-Managed Super Funds. As well as the additional funding the ATO has received, further data-matching capabilities allow for a more accessible landscape for them to come knocking on an accounting firm's door.

If you are subjected to an audit, enquiry, investigation or review you are responsible for the professional fees involved in us providing the required information. Even the simplest enquiry can require hours of work. In some cases, when there are complex environments, unusual circumstances, multiple years or multiple companies and trusts, thousands of dollars in accounting and legal fees can be incurred. In many cases, those who are audited are compliant and have done nothing wrong. However, work must still be undertaken and thus professional fees will be incurred.

We have responded to this growing threat by sourcing the most comprehensive tax audit insurance available and are pleased to offer to you and your business our Audit Shield Service. The Audit Shield Service is fully tax deductible providing you with peace of mind in relation to audit, enquiry, investigation and review associated costs. The features of this are:

- Our accounting fees in responding to audits, enquiries, investigations and reviews of your lodged returns, including those from previous years are covered.
- Specialist's professional fees if we need to engage a tax expert or lawyer for an opinion or defence are covered.

You will soon be receiving a letter from us explaining the policy and inviting you to participate under our Audit Shield Service. Should you have any queries in relation to the offer we encourage you to contact our office upon receipt of the letter.

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