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Selling your business

When selling your business you need to consider various tax matters which must be resolved and be aware of what loose ends need to be tidied up.

Registrations to cancel

You will need to cancel various registrations with the ATO when you sell or cease trading. You are required to notify the Australian Business Register within 28 days of ceasing business and cancel registrations, where applicable, for example:

- Australian business number (ABN)
- Goods and services tax (GST)
- Pay-as-you-go (PAYG) withholding / Payroll tax
- WorkCover

Make sure all business activity statements have been lodged (including a “nil” report) as well as PAYG withholding reports before cancelling your ABN. Your GST registration needs to be cancelled 21 days from ceasing trading, and the final activity statement will need to show any sales or purchases for that period (including the sale of your business, if applicable).

Goods and Services Tax

The sale of a “going concern” will generally be GST-free, subject to certain conditions. One of these conditions is that “all things necessary for the continued operation of the enterprise” is made. If not all assets are sold as part of the continuing business (e.g. essential plant and equipment are sold separately), there is a risk is that you may lose this GST exemption.

If this particular exemption is unavailable, an asset that is “real property”, such as land and buildings will attract GST of one-eleventh of the sale price. For example, if you sell land for $110,000, the GST will be $10,000. However, there is a “margin scheme” for real property you might be able to use, which sets the GST at one-eleventh of the difference between the sale price and typically how much you paid for it. There are specific conditions which apply to access this scheme. GST issues involving the sale of a business are complex, so get advice.

Capital Gains Tax

CGT will likely come into play in the course of your business sale transaction. Don’t forget to account for any capital losses that have been previously carried forward.

There are four CGT concessions available for the “small business” owner. You are a small business if you are an individual, partnership, company or trust that does both of the following:
- operates a business for all or part of the income year; and
- has less than $2 million aggregated turnover.

a. Small business 15-year exemption
If your business has owned an asset for 15 years and you are aged 55 years or over and are retiring, or if you are permanently incapacitated, you won't have an assessable capital gain when you sell the asset.

b. Small business 50% active asset reduction
You can reduce the capital gain on a business (active) asset by 50%.

c. Small business retirement exemption
A capital gain from the sale of a business(es) asset will be exempt up to an aggregate lifetime limit of $500,000. If you are under 55 years of age, the exempt amount must be paid into a complying superannuation fund or a retirement savings account to obtain the exemption.

d. Small business rollover
If you sell a small business asset, you can defer your capital gain until a later year. This means you don't include the gain in your income until a change in circumstances causes a CGT event to happen that crystallises the gain – for example, you don't acquire a replacement asset within the required period, or you later sell that replacement asset or stop using it in your business. When a CGT event crystallises the gain you have previously deferred, all or part of the gain that you deferred becomes assessable.

Payments or 'benefits' to shareholders, their families and 'associates'
For those operating a company, beware of making payments or 'benefits' to shareholders and their families, as such distributions could trigger a tax liability for them under the "Division 7A" provisions; if a company makes a payment to a shareholder or 'associate', or even "forgives a debt", the ATO can deem it to be a "dividend" and require tax to be paid by the recipient.

Final tax return
A final tax return will need to be lodged for the business if operating a company or trust. The tax return will need to cover the period of the financial year up to when the business ceases. Further, make sure you keep all your records for five years for all sales and purchases, and payments to employees and other businesses.

Helpful checklist
The ATO has a checklist to help you follow the correct process when selling a business.

Still need help?
If you need help with any of these matters please feel free to contact us.

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