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WHAT TO CONSIDER WHEN SELLING A BUSINESS

"Much more than price"

It is impossible in this page to include all the things that you need to consider when selling a business so that you get the deal that you desire. Here are some of the more important ones:

1. Confidentiality

We strongly recommend that you have potential buyers sign a promise to keep information which they learn about your business through the due diligence process confidential and they do that by signing a well-prepared deed of confidentiality. Without a deed of confidentiality, the potential buyer could obtain a list of your clients and then approach them with better terms and conditions that you presently offer, without having to purchase your business.

2. Price

When considering the value of your business there are certain components of the business that have financial value. These include but are not limited to:

- Goodwill
- Plant and equipment
- Intellectual property
- Licences
- Stock
- Work in progress
- Debtors

Some of these components have a specific value. A specific wholesale value can be placed on stock and licences. An estimated value can be applied to others based on past performance. For example, the recovery of debtors and work in progress can be determined on how well the business has performed in recovering these in the past. A depreciated value can be estimated on plant and equipment. A taxation depreciation schedule may assist in the value of a business.

The value of goodwill and intellectual property is much more difficult to determine and we recommend that you engage the services of a registered valuer to determine a market value amount.

Ensure that your business financial records are up to date and taxation records have been filed as required. A buyer and valuer are largely going to determine the value of the business based on the previous financial performance of the company. They will make such assessments based on the financial records you provide. For a good price, have good records.

3. Restraint of trade

Most buyers will want to ensure that when they purchase the business from you that you are not going to set up a business in competition with you down the road. You will need to consider in advance what you will be willing to agree to with respect to your future employment or business endeavours. You should consider what you are going to do after the sale. It is likely that the buyer will insist on a condition of sale that you agree not to be involved in any similar type business for a period and or within a geographical area.

If that is the only thing that you know what to do, this will require an assessment of the price so that you have a sound income while you consider other opportunities. It will be of no benefit to you to sell your business for a year's income when you cannot find a job or another business within that time and you have financial commitments that need to be met.

4. Business name

Will you be selling the name which you have built over the years or not, if not, why not? Does that affect the price?

5. Personal Guarantees

If your business is being operated under a company or trust structure, you would have invariably signed personal guarantees to your landlord in the lease, to the bank, to your car/truck/equipment finance company. Unless you are released from these personal guarantees you may well be held responsible for liabilities after the sale. A good place to start is to review the agreements that you have with your suppliers.

6. Approval and licences

Quite often businesses with operations worth millions of dollars operate without proper approvals from councils or other government authorities. This could greatly affect the price of the business or whether you secure the sale of the business. The buyer will normally insist that you have the approvals, permits and licences that you require to do the work. They will be concerned that the Council or other Government authority may advise them that they can no longer do what they do now.

If you do not have the proper approvals, permits or licences we encourage you to work with your lawyers before the sale or otherwise it must be clearly disclosed to the buyer. If you do not make disclosure you may be sued by the buyer once they realise.

7. Taxation

You need to consider the effect of GST, Capital Gains Tax, and income tax on the price that you are asking for. Many sellers decide on a price that they believe they will need in retirement or for a new venture. Without proper consideration of taxation issues, you could lose up to 50% of the sale price.

8. Training and assistance to buyers

In simple businesses, this requirement is negotiable but in complex and high value businesses, purchasers will insist that the vendor and key people stay on for a period to assist in the transition of the business. We encourage you to carefully read any consultancy agreement. This consultancy agreement should clearly identify your responsibilities under the agreement and the duration of the consultancy services.

9. Employees

Not unlike taxes, employee entitlements should be calculated before you decide to sell so that you are clear on what you will receive after all obligations are paid. Long Service leave, redundancy payments, holidays, superannuation all need to be considered.

It is so important when choosing a lawyer to advise and act on the sale of your business that you ensure that they understand business and specialise in this area of law.