TOP 10 TIPS FOR SELLING A COMPANY

You have made the key decision to sell your business. A big decision that needs to be made early on is whether to proceed by way of a share sale or an asset sale.

Going down the share sale route allows you to sell your business in its entirety, both assets and liabilities.

In an asset sale, you sell only those assets you want to sell (or those which the buyer wants to buy) and you are left to deal with the liabilities that (in general terms) cannot be transferred away from you.

There are advantages and disadvantages to both, so take advice before coming to a decision.

If you decide to proceed by way of a share sale, here are our top ten tips to make the process run smoothly.

1. EARLY PREPARATION IS KEY

Preparing to sell your business may take several weeks or months. It is important to plan for this as early as possible and get all of your business affairs organised and up to date. This will save money in the long run. It helps to ensure that the best price is paid for your company and makes it a more attractive prospect. Buyers will be more likely to go for a business which has been organised and managed well.

2. ASSEMBLE A GOOD TEAM

You should have a strong management team in place prior to the sale. This is a sign of a well-run company and is a good selling point. Selling your business will take up a lot of your time, so you'll need others in place to deal with the day-to-day running of the business. It is also important to appoint a team of trusted and experienced professional advisors at an early stage. Having a negotiator in place from the get-go helps to maintain relationships with the buyer, should things become heated.

3. DO YOUR DILIGENCE EARLY

As a seller, you should carry out your own diligence on your company as early as possible to avoid any nasty surprises for buyers (and for you!). Ensure that you have access to all key contracts with employees, customers and suppliers, and all other relevant contracts and information. Having this information readily available will make the diligence process less painful and allow any issues (such as change of control provisions) to be identified and addressed at an early stage.

4. TIMING AND MOTIVE

It is important to sell your business at the correct time and with the right motivation. Sometimes business owners want to sell due to health problems or if they feel they are getting too old to carry on. This is not the ideal time to be selling your business. The sale process can be demanding, and you need to be able to cope with the pressures this brings. You also do not want the buyer to be able to use your situation to its advantage. The right time to sell is when the business is performing well and long before it becomes a necessity for personal reasons.

5. LETTER OF INTENT (LOI)

You should try to negotiate all of the material terms of the deal in an LOI since this is when your position as seller is the strongest. A buyer's main concern in an LOI will be to have the seller agree not to seek out any other buyers for a period of time. You should therefore take legal advice early when this is being negotiated.

An LOI will show serious intent. However, it is usually drafted so that its terms are not legally binding with the exception of a few matters such as confidentiality, costs, and any period of exclusivity to which the seller agrees. A seller should ensure that the LOI is clearly drafted and covers as many key terms as possible to reduce the risk of the buyer trying to renegotiate the price or the nature of the deal at a later date.

6. TAX

There will be different tax implications for both individual and corporate sellers to consider. A UK resident company will be liable to corporation tax on any gain that is made on its sale of a target, unless an exemption applies, such as the Substantial Shareholding Exemption. Consideration should also be given to the tax implications of extracting sale proceeds from a corporate seller, which could trigger income tax or capital gains tax in individual shareholders' hands. Individual sellers will be liable for capital gains tax, but certain exemptions such as Entrepreneurs' Relief, Investors' Relief or EIS relief can reduce that liability. There may also be income tax and national insurance contributions issues if employee shareholders (or share schemes) are involved. Consideration should be given at an early stage as to how the tax on the sale shares is going to be dealt with, and a good tax lawyer will be a crucial advisor in the structuring and timing of the sale.

7. ASSESS STRUCTURAL ISSUES

Structural issues will be important where there are a number of shareholders in the company, and in family businesses where there are shareholders in the background who may not have any day-to-day connection with the company. Buyers will rarely want to purchase anything less than 100% of the shareholding so it is important that all shareholders have bought in to the process.

8. KEEP EXIT PLANS SECRET

It is not wise to let others know that you are planning to sell your business. This can cause alarm to suppliers who may request payment up front for their services if there is uncertainty as to where this may come from in the future. Similarly, letting employees know your business is for sale could adversely affect your relationship with them by causing unnecessary uncertainty. Job insecurity is not a good motivator and could be costly for your business at this key time.

9. CONSIDER CONFIDENTIALITY

It is important to protect your 'trade secrets' during a negotiation. During the process you will be allowing the buyer access to confidential and sensitive information. The buyer should sign a non-disclosure agreement (or confidentiality agreement) before it receives the sensitive information - otherwise it may be difficult to protect this information further down the line.

10. ADDRESS TRANSITIONAL ISSUES

A key consideration, often neglected during the course of the sale, is the transition process. The buyer may request that you remain in the business for a period of time after completion. Alternatively, the buyer may not want you around at all, preferring to bring in its own people. It is important to deal with this up front so that expectations are managed and, if necessary, to agree a transitional arrangement. If you are to remain in the business after the sale goes through, this is an added incentive to maintain relationships and avoid unpleasant exchanges during negotiation.