Property Agent Matters

Opening the doors to future prosperity

Christmas Wrapping – your business!

We are at that time of year again, and where have the last twelve months gone? 2014 has, for all my agent clients, been a good year. There have been quiet patches, as always, but generally stock levels are good and both sales and lettings are performing well. The property market is certainly in a much better place than five years ago.

Over the festive period, other than the eating, drinking and general merriment, there is often a time for reflection of the past year and what's to come in 2015. It's also a common time for owners to ask themselves the question "how much longer do I want to do this?" and "how on earth am I going to be able to exit?"

So, with those questions in mind, it seems like a good time to set out some of those options for you. I'm going to start by saying it is generally easier to exit and pass on your business if you operate as a limited company. A sole trader or partnership brings with it added complexities. They are certainly not insurmountable, but it may be a two stage process. To try to keep things brief (what with all that shopping you still have to do), I will focus on limited companies and the options available to them.

Sell to a third party

Sounds simple? Unfortunately, that's not always the case. There are not many acquirers in the market at the moment for the sales side. Lettings is different and I have seen a number of acquisitions made over the last twelve months. That could mean a two stage exit process, selling the lettings business to a third party and then looking at other avenues for your sales business.

If you are looking at selling to a third party, you need to make sure your business looks the best it possibly can. Acquirers will look at historic figures, but also current management accounts and your pipeline/forecasts before making an offer. Cutting out non essential expenditure and ensuring you are as lean as possible can increase your profits, therefore increasing the price you receive on sale.

Taking advice is essential, as generally it will be the sale of shares and you will need to give various assurances (warranties) and indemnities to the acquirer. It is important to only give as much as you need to.

However, whilst this is an option, for many agents, their business is understandably very personal to them, having grown it over a number of years.They don't want to see it sold to a large corporate where the personal service and ethos is lost. So, owners will look at ways of "keeping it in the family".

Sell to management

Have you identified key individuals who will be able to run your business after your exit? If so, there are a number of ways of passing ownership to them tax efficiently, but first, a word of caution, don't just gift shares to them, otherwise that could result in a significant income tax liability!

EMI Options

One way of incentivising and retaining key staff is offering them share options, a carrot to motivate them, on the basis that if they achieve certain performance targets, they will be able to purchase shares in the company.

The benefits of the Enterprise Management Incentive (EMI) scheme are many:

1. You get advance approval from HMRC as to the share price, therefore avoiding the risk of income tax liabilities.
2. The share price can be heavily discounted for it being a minority shareholding (often as much as 75%).
3. The price is fixed, even if the value of the shares increases from the date the options are granted to the date they are exercised.
4. For Entrepreneurs' Relief purposes, the qualifying twelve month period commences at the date of grant, so if they sold shortly after acquisition, they should still be eligible for the relief, so the individual pays tax at 10%

So, the employee has managed to obtain shares at a reasonable price, but that

Continued overleaf...

doesn't help you with your shareholding. If there are sufficient profit and loss reserves in the company, then the next stage would be to consider a company purchase of own shares.

Company purchase of own shares

In this scenario, the employees don't need to finance the acquisition of your shares, the company buys its shares back from you, using its own cash, or borrowing sufficient from the bank to allow the company to do so.

Providing certain qualifying conditions are met, the monies paid by the company will be a capital payment, such that, assuming the owner qualifies for Entrepreneurs' Relief, only 10% tax is payable.

Great news, but what about the conditions? If you're selling your entire shareholding, most of the conditions will be met automatically, but you do need to have held the shares for five years and the company does need to have sufficient reserves. What if you don't qualify?

New company purchase

In this scenario, a new company is formed to purchase your shares, possibly using the company's cash, or perhaps borrowing from the bank. Because it is a new company making an investment, it doesn't need to have reserves to allow it to make a purchase.

The new company then purchases the owner's shares in cash, but purchases the remaining management shares through the issue of new shares in itself, as opposed to cash, meaning the management become sole owners of the new company, which in turn owns 100% of the existing company.

Sounds complicated? Perhaps, but with the right advice, it can be relatively pain free. Taking this a step further, if management don't own any shares, they could form their own company to make the acquisition. This results in the same end position, but without the initial investment in the existing company.

Employee shareholder status

There's a new kid on the block and it's the employee shareholder status (ESS). This can give employees a better tax position than EMI, but with some conditions attached.

ESSentially, you can gift your employees shares worth £2,000 with no income tax liability. HMRC will give advance approval to confirm the value. You can go up to £50,000 in value, but then an income tax and national insurance liability would arise.

This is, however, on the condition that the employee gives up certain employment rights, including unfair dismissal rights – (excluding automatically unfair reasons e.g. discrimination), statutory redundancy pay, right to request flexible working and certain rights to request to undertake study or training.

Providing the shares qualify for ESS, any disposal by the employees will be exempt from capital gains tax, a better proposition than a 10% tax charge under EMI.

A Family Gift?

At this point, you may be reaching for that bottle of red wine, port, Baileys (or paracetamol!), in which case a simpler solution might be to just gift your business to the next generation. You can do this with shares really easily and with no capital gains tax or inheritance tax implications (providing certain elections are made and your children don't sell the company the day after you gift it!)

Often, the difficulty with this route is that the next generation may not want to be an Estate or Letting agent, they don't like the hours you've had to put in!

Closed for Christmas (and for good?)

The last resort would be to close the business, strip out what you can, and call it a day. Not something to be considered lightly, you've built up a valuable asset and should get some benefit for it to give you a nice retirement, but sometimes you've just "had enough!"

A business is not just for Christmas...

How you structure your exit is a big decision and not one to be taken lightly. Getting the timing of the various component parts is important to ensure tax efficiency for both you, your family and employees.

As you can see, there is a lot to consider, but with our help, we can guide you through the process to take away the pain, so that the parectamol won't be needed.

I wish you all a very merry Christmas and a happy, and prosperous, 2015.

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