

Notes for Clients Selling a Business

These notes are for general information only. They should not be relied upon in the absence of advice about a particular situation and no liability is accepted in the absence of our receiving formal instructions and providing formal advice.

1. Have you discussed the transaction in advance with your accountant? Both the timing of the exchange of contracts and the apportionment of the total sales price between property, goodwill and equipment can make a significant difference to any tax liabilities. The Inland Revenue seems likely to take a great deal more interest in the accuracy of figures apportioned to e.g. lease, goodwill, equipment, than it has in the past. Advice on these figures should be obtained from appropriate experts and copies of their advice kept for six years in case the Revenue comes back with any enquiries. Must the Buyer pay VAT on any items?
2. Particularly if you are approaching retirement, you should contact your accountant about eighteen months before the contemplated sale if possible. Your accountant and also your solicitor may well be able to suggest and arrange matters which will maximise retirement reliefs to reduce Capital Gains Tax and potential Inheritance Tax.
3. It is sometimes advantageous to be willing to sell the business separately from the premises from which you conduct the business.
4. Do you have any documents which relate to the premises which are not with the title deeds, for example, information regarding a rent review or your Landlord's consent to your making certain improvements?
5. Do you have any Planning or Building Regulation Approvals at home?
6. You may well have equipment which is used in the business which is either leased, or on hire purchase, or which has the benefit of some sort of maintenance agreement. The Purchasers will need details of these. In most cases you cannot assign these contracts without the express written agreement of the other party. You should check the contracts carefully and seek the consent of the equipment lessor, hire purchase company or other organisation involved, for the proposed transfer of the equipment to the buyer of the business. In some cases you will not be given permission. In other cases the transaction may take weeks and should therefore be started early.
7. Technically the sale of the business is a termination of the employment of all your staff. If they are going to be offered employment on the same terms by the new owner of the business they will not, be entitled to redundancy payments etc. However, this situation needs to be considered carefully. The following information will be required in respect of any staff whom the Purchaser will continue to employ:

- a) Full names;
- b) Dates of birth;
- c) Description of job;
- d) Rates of pay and any other benefits;
- e) Hours of work;
- f) Date on which employment commenced;
- g) Holiday arrangements (including information on any holidays which will remain due to them at the time of completion of the sale of the business); and
- h) Copy Contracts.
- i) Any special arrangements eg for disabled staff.
- j) Any Notices given or served.
- k) Any disciplinary record.
- l) Any grievance matters.
- m) Full details of your grievance and disciplinary procedures.

This includes if you are selling part of a business employees who are not part of the business being sold but who may be affected by the transfer of that part of the business.

Under Section 13 of the same Regulations you are obliged to inform and consult employees who may be affected by the sale.

IF YOU NEED FURTHER INFORMATION ON THESE MATTERS PLEASE REQUEST IT FROM US.

8. Of course, any staff who are not being taken on by your Buyer will be your responsibility and redundancy payments etc will have to be calculated. Do you wish us to deal with this, or is this matter already in hand? The Buyer may well want information on these staff also along the lines of 5 above as, if you fail to make the payments he might be liable.
9. Obviously one cannot be precise as to the amount of stock which will be on the premises on completion. However, can you agree a range of figures within which the valuation will lie? This assists the Purchaser to make his financial arrangements.
10. Do you think that you and the Buyer could, yourselves, agree the valuation of stock on completion, or would you want an independent valuer and if the latter, at whose expense?
11. A complete list of the equipment included in the sale will need to be provided.
12. If there are any Contracts to sell to, or by you, which you expect to continue after completion, the details will be required. (Not all such Contracts can be transferred without the agreement of your supplier/customer).
13. A Seller is often asked to undertake not to operate, or be employed in a similar business within, say, four or five years from completion and within a specified distance of the business premises. Would you agree to such an arrangement? Sometimes a Buyer will want similar covenants from other members of the family or senior members of staff.

14. Presumably any bills owed to the business which have not been paid to you by the completion date will be collected afterwards by you and will not involve your Purchaser in any way. (Sometimes the Buyer takes over the bills, in which case we shall need to assign them. Sometimes there is an arrangement whereby the Buyer collects the bills on the assumption that those customers will continue to attend the shop. He would then account to you for them).
15. Confirmation may be asked that there have been no disputes with anyone about the use of the name under which you trade.
16. A copy of the any Licence for the premises and confirmation that nothing has occurred which suggests there will be an objection when it comes up for renewal will be required.
17. Have there been any notices or warnings or anything which indicates that there may have been any customer complaints or public health complaint or order relating to some aspect of the business, or the business premises? If there are any proceedings or negotiations taking place between you and an authority, a customer, a supplier, or an employee or anyone else then it is probably helpful to bring these to a conclusion as quickly as possible and disclose them in full to the buyer. If they discover them through some other source later on the sale might be delayed to lost.
18. If the Buyer were late in completing the purchase, would you want to continue trading at all, and, if so, at the Buyer's risk and benefit of your own?
19. If you are a Tenant, are you in full compliance with the Lease?
20. If you are granting the buyer a lease, or if you are selling an existing lease, other questions arise.
21. Other matters will need attention, but are easily overlooked, such as:

Ensuring that the buyer has full information on any burglar alarm devices and contract terms

Considering whether the buyer should reimburse for any prepaid advertising

Considering what arrangements should be made regarding websites, email addresses, domain names

Bringing entries in directories up to date

Membership of trade organisations.

22. Are your registrations under the Data Protection Act in order?

This wide range of issues can usually be dealt with quickly and easily when you have discussed them with us. Not all apply to every case, but most will apply however large the business and whether owned by a limited company or not.