

What are we selling?

One of the most important factors to establish as early as possible in any proposed transaction, is whether the purchaser is buying the shares in the legal entity or the 'client bank' of that entity.

- An asset or 'client bank' purchase is where the purchaser acquires certain assets from the vendor (generally client data, the right to continue contracts and the intangible goodwill of the clients).
- An asset purchase leaves all unacquired assets and liabilities tied to the legal entity. It is the seller's responsibility to complete an orderly wind-up of the business post-transaction.
- In a sale of shares scenario, the share capital, including all assets and liabilities, transfer from the seller to the purchaser. Most notably, this includes any potential risks relating to previous advice provided to clients. This should be addressed in the sale agreement.
- The disposal of assets by a legal entity, creates a gain, which is subject to corporation tax at the prevailing rate. If all other criteria are met, the vendor could receive Business Asset Disposal Relief when winding up the company.
- Selling the shares in the legal entity should (subject to all other conditions being met) allow the vendor to qualify for Business Asset Disposal Relief and avoid paying corporation tax.
- Care should be taken with regard to the application for Business Asset Disposal Relief, particularly in relation to contingent deferred consideration amounts. This is one important area that the seller should take advice on in structuring the deal.

Do

- Raise the tax treatment of the transaction at the earliest possible stage in discussions. Agree the principles.
- Get professional advice as early as possible.
- Clarify the tax treatment of a proposed transaction, if it is not specifically mentioned in the Offer Letter or Heads of Terms.
- Obtain pre-approval for the tax treatment of the transaction when advised to do so.

Don't

- Assume you are selling the shares in the business, as the tax difference may be significant.
- Assume that the buyer will automatically accept your business liabilities as part of the sale.
- Expect the purchaser to change the price and terms offered, to help you with your tax bill.
- Forget to allow for tax payments, when planning how to invest your initial consideration.

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