HEADING FOR THE EXIT: PREPARATION FOR THE SALE OF YOUR BUSINESS

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You've spent years, maybe decades, tirelessly building your business. When the time to sell approaches, the realization sets in that the success of that sale will impact not just your retirement, but also the legacy you leave for employees, the community and your family. At the same time, most businesses are not "sale ready". Below is an overview of key considerations as you prepare for a sale.

#1 – What Really Matters – Be Clear About Your Objectives

The primary objective of business owners during a sale event is almost always to maximize the financial return on years of effort. At the same time, monetary return is often not the only thing that matters. Protecting a corporate culture, maintaining a legacy in the community and looking out for long-time employees may weigh heavily, and the sale process is the opportunity to address those matters in a lasting way.

With that in mind, you may consider negotiating a full or partial sale that allows for ongoing involvement, including a role in on going management. Being intentional about ideal buyers, and negotiating terms that address your broader objectives, should be a priority in the early stages of a sale.

#2 – Put a Bow on It – Preparing a "Sale Ready" Business

What does a buyer look for? How do I attract credible buyers who will pay top dollar? These questions, and others like them, should inform the sale process.

A Promising Financial Picture

Buyers want earnings now and a vision of growth in the future. Because every dollar of earnings will fetch you a multiple of that in the sale process, undertaking profit improvement initiatives years in advance (buyers want to see them as sustainable) should be a top priority. At the same time, focus on opportunities for top-line growth by creating a plan to enter new geographic or product markets and be prepared to communicate that strategic vision to buyers. Realistic and detailed financial forecasts give buyers confidence in a bright future.

While costly and time consuming to prepare, audited annual financial statements provide comfort to buyers

that the financial results may be relied on and that the business is professionally run. Conversely, the absence of credible financial statements are often a red flag to buyers.

A Smooth Transition

Private business owners know the business and are often involved in its day-to-day operations. Buyers want to know that a smooth transition in ownership will be mirrored by a seamless transition in management of the business and its operations. Management succession planning, and the implementation of appropriate incentives, sets the stage for a trouble free sale. You may also consider negotiating terms for the owner to remain on in a consulting or employee role. If your goal is to head off into the sunset, then thorough succession planning months or years in advance should be a priority.

In addition, Buyers may shy away from businesses that require a significant make-over. Consider objectively reviewing equipment, technology and infrastructure and updating them where appropriate. Doing so provides the new owner with extra years of depreciable value and saves them the hassle of upgrading during the already busy transition period. Upgrading capital assets now will pay dividends at sale time.

No Headaches – A Due Diligence Dry Run

Many potential sale transactions have been aborted during the due diligence process because buyers didn't like what they were seeing. You should consider a due diligence dry run to identify and address those issues that would have meaningful value implications or could even give buyers cause to walk.

Reviewing, and where possible resolving, ongoing litigation and other claims, running searches of the personal property registry to ensure there are no security registrations against the company's assets that should have been discharged, and putting your financial house in order will smooth out the sale process. Ensure that no personal assets (e.g. cars, RVs, real property) have been commingled with the assets of the business.

In addition, a sale transaction may constitute a "change of control" under commercial agreements, leases, lending arrangements, employment agreements and otherwise. Consider whether necessary consents could be obtained and the scope of required change of control payments.

#3 Dodging the Taxman – Protecting your Sale Proceeds

Protecting your sale proceeds from the taxman is a process that should begin months, even years, prior to the sale itself, and there are numerous proven and effective tax planning strategies that will accomplish this.

For example, the lifetime capital gains exemption is a valuable tax incentive available on the sale of a qualified small business corporation or qualified farm or fishing property. In 2020, the first $883,384 of capital gains on qualified small business corporation shares or the first $1 million of capital gains on farm or fishing property

may be received tax free. But specific conditions must be met in order to access the exemption, including 24-month ownership and assets tests in the case of qualified small business corporation shares. It is often possible to "purify" a corporation which would not otherwise qualify, but it is important to undertake planning well in advance of the sale given the 24-month ownership and assets tests.

An estate freeze is another valuable strategy which can address several objectives, including significant tax savings (now and on the sale), incentivizing the next generation of management (family and otherwise), providing for the owner's retirement fund, and potentially multiplying access to the lifetime capital gains exemption. However, the best time to utilize an estate freeze is well in advance of a sale, and particularly when corporate valuations are low. If you've previously put in place an estate freeze, you may consider a "thaw" and refreeze. You may also consider a partial freeze.

Planning to access the lifetime capital gains exemption or utilize an estate freeze is complex and improperly executed freezes or purification transactions can be costly. You should speak with sophisticated legal and accounting professionals to properly implement a freeze or purification transaction.

For more information and legal advice, please contact the undersigned for a free initial consultation.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.