

## Planning for the sale



As private individuals, the sale of our family home may well be the biggest financial transaction we ever undertake. In the same way, the owner of any care home business will hope to realise a profitable sale at some point, either on a disposal of the whole business or perhaps by selling off part of a care home group.

For the business owner, though, there is one important difference, which is the need to plan well in advance of any such transaction; the corporate finance departments of the big accountancy firms typically recommend a preparation period of at least three years. This allows time for the vendor to try to build up a pattern of accounts that reflect healthy and consistent profitability, but also provides an opportunity to present the home and its management in the best possible light.

An important part of the preparation for any sale inevitably revolves around tax matters.

Fundamentally, it will be necessary to consider whether the sale will be at shareholder level (so that the owner of a company sells it to someone else, but the same company continues to own and operate the business) or whether there is to be a change in the direct ownership of the business assets. The tax issues

(both the computation of any capital gain and the most appropriate ways to mitigate any liability) will vary considerably according to this choice.

One of the biggest tax planning areas for anyone contemplating a business sale is the whole question of capital allowances, and early planning can make an enormous difference in protecting the value of the vendor's allowances. Key considerations before the business is sold will include those in the checklist below.

### Checklist

- Have all possible capital allowance claims been made?
- If not, should they be made before the sale or should they be left for the purchaser to claim (not as clear cut as it sounds – see example 2)?
- If any allowances have been (or will be) claimed, is it appropriate to propose a joint election with the purchaser to gain certainty on the tax treatment?
- What figure should go into that election, and how is that best negotiated with the buyer?
- How can the vendor ensure that any election is valid, given the changes introduced since 2008 to the treatment of “integral features”?
- What wording should be used in the contract so as to gain both certainty and the best possible outcome for the vendor (especially if it is necessary to apportion the price between the freehold, goodwill and other assets)?

The first example that follows is a fairly typical pattern in our experience.

### Example 1

A care home owner is thinking of selling up in the fairly near future. He knows that certain capital allowances have been claimed and doubts that there is much hidden value, but decides to have it checked out just in case. A detailed investigation reveals that when an extension was built five years earlier, a partial claim was made for allowances that were due. By making a further claim at this later stage, additional allowances of £30,000 are due. These generate an immediate tax saving and also provide a negotiating point with the purchaser over who should have the remaining value of the newly discovered allowances.

The next example is of a situation that is a little less common but that does arise in practice as long as both parties to the sale and purchase transaction are well informed on the capital allowance technicalities.

### Example 2

A care home owner realises that when he had the home built many years previously, no proper claim was made for capital allowances at the time. Tax relief was given for the moveable items of fixtures and fittings but not for the fitted furniture, sanitaryware, specialist electrics or other items forming part of the property.

If a full claim had been made, it is estimated that about 20 per cent of the building cost of £300,000 could have been claimed, but this was simply overlooked by the accountant who had misunderstood the rules in this area.

The value of the property has risen over the years and, excluding the underlying land value, now stands at around £1 million. If we ignore (for now – but see below) the question of integral features such as general lighting and electrics, we can assume for the purposes of the example that the same 20 per cent figure would apply.

The vendor, now fully in the

picture, has a choice. Either he can himself claim additional allowances of £60,000 (£300,000 @ 20 per cent) or he can commit to making no claim and allow the purchaser to claim allowances of £200,000 (£1 million @ 20 per cent), i.e. on an apportioned basis without any restriction to historic cost as there has been no earlier claim. If he understands these issues before the negotiations have got underway, he can simply offer the unclaimed allowances to the purchaser, at a price that is a win-win for both parties.

Incidentally, the purchaser will also be able to claim allowances on the value of the integral features, which were not eligible for a claim when the property was built, many years ago (i.e., before the rule changes in 2008).

Whenever the owner of a business property has claimed allowances for fixtures that are part of the property, he will want to give serious consideration to protecting the value of those allowances at the time of sale. Almost certainly, the vendor will wish to ensure that the purchaser gives a legal commitment that he will sign an election in relation to the fixtures in the property. The figure to go into the election may have to be negotiated but the big advantage for the vendor is that he can then put the books away after the sale, safe in the knowledge that the figure in the election is fixed and cannot be challenged, either by HM Revenue & Customs or by the purchaser of the property.

Both parties need to take care to ensure that the election is valid. Technically, there is meant to be a separate election for each individual asset but in practice that would be impossible. Nevertheless, failure to distinguish between integral features (as defined from April 2008) and other fixtures could invalidate the election: a potentially catastrophic outcome for the vendor.

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