If Selling Was Easy – Everyone Would Do It

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If selling your business has crossed your mind, there may not be a better time than now. In the first quarter of 2018, mergers and acquisitions (M&A) are off to their strongest start in history. Tax reform is increasing companies' cash on hand while allowing full and immediate expensing of capital investments, both of which provide incentive for companies to invest. It's no secret that successful business owners know the ins-and-outs of their industry, but the complexities of selling your business bring about a number of questions that require an experienced M&A team to provide answers.

Questions like how do I sell my company and what's my company worth? Should the sale be structured as an asset purchase or stock sale? What is due diligence? How do I minimize my tax burden and how do I maximize my ability to deduct, expense, or depreciate? Do I need a broker to help sell my company? Do I need a lawyer to draft the sales contract? Do I need a CPA for valuation methods? How do I protect myself post-closing? These are all critical questions embodied with stringent tax and accounting principles that must be answered clearly, concisely, and accurately.

You have put a lot of time, effort, and equity into growing your business. You're debating on selling and you may or may not have an interested buyer. You're seeking maximum value so you look to market the company to specific competitors and various businesses within your industry. This is one of the first steps in selling your business. At this step it becomes apparent you need an experienced Broker and M&A team who can take you from start to finish. A Broker and M&A team that can market your company to prospective purchasers, execute legal documents, negotiate for your best interest, strategically calculate your allocations for tax minimization, and maintain an efficient pace to close the deal. Communication breakdowns often take place when the marketing, legal, and accounting aspects of a transaction are performed by separate firms. The value in having a "one-stop-shop" firm is displayed through quick, precise, and related communication with a client-based focus is unparalleled.

So the CPA on your M&A team has calculated the value of your company and you have a letter of intent from an interested buyer, the question becomes what sale structure is best for your transaction? An Asset Purchase Agreement (APA) at its most basic level will provide for the sale of tangible and intangible goods in return for cash. A well drafted APA must provide the legal instruments necessary to transfer ownership, such as a bill of sale, closing statement, security agreement, etc. Under the general rule, an APA will guard against successor liability, however that may not always hold true. Therefore, it's imperative to understand the language and structure of your deal. Maybe a stock sale is best suited for your transaction. When you enter a stock sale, not only does the buyer buy all of the cash, receivables, payables and assets, but also the successor liability attached to the company. Liabilities could be wide ranging and if unexpected could be very expensive and troublesome to remedy. To add more complexity, under proper circumstances, an experienced M&A advisor may pursue a stock sale but use the federal tax code to treat the transaction as an asset sale for federal income tax purposes. It's imperative your M&A team understand the structures and consequences of deal structuring as it’s key for tax minimization.

Your M&A team has provided insight on a proper sales structure and you’ve executed a letter of intent, time for due diligence, and negotiations. The due diligence period is vital to every merger or acquisition. Performing due diligence is demanding, high-pressure, and requires a considerable amount of skill and expertise. Based on complexities of the transaction, due diligence could take a few weeks to many months. Your M&A team needs to focus and understand the selling company’s strategic position, financial data, operational matter, and legal matters. During the due diligence period the company’s value is confirmed, risk is determined, financing is discussed, and the final closing documents begin preparation. Due diligence can bring about points of negotiation and contention between parties and its important your M&A team strategically navigate the contention and complexities. Complexities that range from adequate financing, earn-outs, tax allocations, working capital issues, to stalled buyers, sellers, and opposing M&A teams. Additionally, these complexities must be handled under the deadline of a looming closing date.

As due diligence wraps up and final documents are drafted, the time comes for your closing. The Center for Financial, Legal, & Tax Planning, Inc., (The Center) emphasizes the importance of an in-person closing. An in person closing provides comfort through a hands on explanation of each document, leaving neither party with outstanding questions. However, the transaction does not end there, your M&A team must prepare for post-closing issues. Post-closing issues range from escrowing funds for buyer protection, satisfying the seller’s accounts payable, to corporate name changes and structuring, to seller payouts. From a Seller’s standpoint, it’s vital your M&A team secure the transaction post-closing.

Mergers and acquisitions are complex and require a cohesive team to strategically move through the process with an efficient strategy that suits client needs. With eighty years of combined M&A experience, The Center has executed hundreds of M&A transactions and offers a unique “one-stop-shop” M&A service that can take a deal from start to finish. Our team of attorneys, CPA’s, and tax experts will provide the insight and expertise to minimize your tax burdens, protect your investment, and structure your deal to maximize the value of the business you built. If selling your business has crossed your mind please contact The Center for Financial, Legal, & Tax Planning, Inc., at (618)-997-3436 for a free consultation.