**Asset sales – some tax considerations**

This section deals with the issue of how shareholders are taxed on the receipts by a company when it sells its business or assets. It also looks at the VAT exception for asset sales.

**Introduction**

We will now consider some of the tax issues that arise for both the seller and the buyer on an asset sale.

You may wish to re-visit the Personal taxation and Corporate taxation elements from Business Law & Practice to remind yourself about the key concepts, reliefs (e.g., rollover relief) and exemptions (e.g. SSE) as they can still apply in an asset sale concept but are not covered here.

**Passing proceeds of sale to the shareholders**

If a company only operates one business and sells all of that business then following the settlement of any outstanding liabilities, the selling company will be left as an **empty cash shell**. In such a situation it is likely that the shareholder(s) will wish to extract the cash from the selling company.

There are two options available to the selling company:

* **Declare a post-sale dividend**: if the selling company declares a dividend, the cash received by the shareholder(s) will be an income receipt.
* **Place the company into liquidation after completion:** the cash which the shareholder(s) receive through a liquidation of the company will be a capital receipt for the shareholder(s) and treated as if there has been a sale of the shares in the company.

The tax consequences of this will depend on whether the selling company is owned by individual shareholders or by a holding company as you studied in SQE1 Prep.

**Value added tax – provisions in the sale agreement**

It is usual to have a specific VAT clause in the business sale and purchase agreement.  If the conditions of Article 5 of the VAT (Special Provisions) Order 1995 are satisfied, the seller should not charge VAT on the consideration.

However, it may be that the conditions of Article 5 are not satisfied. In such a situation HMRC will expect the seller to account for VAT on the consideration paid by the buyer. If the consideration in the acquisition agreement is not stated to **be exclusive of VAT**, the consideration will be deemed to be **inclusive of VAT** (s.19(2) VAT Act 1994). In this case, the seller would have to pay part of the consideration it had received to HMRC.

As protection for the seller, in case HMRC conclude that the TOGC exception is not available, it is usual for the seller to:

1. oblige the **buyer to pay any VAT** due;
2. state that the **price is exclusive of VAT**; and
3. obtain confirmation from **the buyer** that it will **comply with the conditions** in Article 5 VAT (Special Provisions) Order 1995.

Note: if land is one of the assets being sold, there are additional considerations if the seller has opted to tax its interest in the land. Those considerations are beyond the scope of the course.

**Stamp duty and stamp duty land tax (SDLT)**

Any shares that are sold as part of the asset sale will be subject to stamp duty, payable by the buyer.

If the assets of the business being bought by the buyer include an interest in land, the buyer must deliver a land transaction return (on form SDLT1) to HMRC within 14 days of completion. It should also pay the SDLT within 14 days, or it will incur interest and might incur a penalty.

For all assets the disposals are taxed in accordance with usual rules for corporation tax so any losses or reliefs that apply to a particular asset class can be applied as appropriate.

**Summary**

* On an asset sale corporation tax will be payable by the company in relation to each of the assets. This could lead to double taxation for the shareholder who may pay additional taxes on the passing on of the proceeds from the selling company.
* Generally, the sale of a business as a going concern falls outside the scope of VAT provided certain conditions are satisfied. It is common for the acquisition agreement to provide that the price is exclusive of VAT to protect the seller in the event the transfer of a going concern exemption does not apply.
* If shares are sold, stamp duty must be paid. If land is sold, SDLT may be payable.