

Welcome – Summer 2016

Welcome to the Summer edition of our Business Information newsletter.

In this edition of our newsletter we discuss what is involved in selling your business and things to consider if you plan to buy a house with friends or relatives. We also introduce our new Virtual Cabinet Document Portal which will streamline the process of distributing and signing client documentation.

We also wish to take this opportunity to congratulate our long term client, Crown Coaches, on 50 years in business. Jim, Melinda, Ben and their spouses were invited to an event to celebrate the milestone at Balgownie Estate Vineyard which was a wonderful evening (see a copy of the cake below). All guests were presented with a published book detailing the stories behind their success which includes a Foreword from our former Partner Brian Taylor. BHT Partners have been associated with Crown Coaches for 48 years and are proud to have witnessed the success of this amazing organisation. If anyone would like a copy of the book please let us know.



What's involved in selling your business?

Selling your business can be a stressful time and unless you've done it before, it's hard to know what to expect or what's required to get the right result. We've put together the top issues for business owners or investors to maximise their results.

Understand what you are selling and the tax implications

What you are selling and how you are selling it will have quite different tax consequences.

For example, let's say the business is operated through a company structure. If the company sells the assets of the business (e.g., goodwill, equipment, intangible items etc.) then the immediate tax impact rests with the company. If your intention is then to flow the proceeds of the sale to the shareholders, then there is another taxing point that needs to be understood and managed. Depending on the circumstances there may be options for managing this in a more tax efficient way.

However, if the shareholders are selling their shares in the company, then the tax impact is managed at the shareholder level and dealt with by each of the shareholders.

The overall outcome from a tax and cashflow point of view could be quite different. It's important that you get good advice as soon as you are thinking of selling your business to understand the taxing points triggered by the sale and what options might be available to improve the overall outcome, including the availability of any concessions and the conditions that need to be met to qualify for them.

The GST implications of any sale also need to be established up front. If the business is sold as a going concern, that is, it's 'business as usual' despite the sale, then the sale is generally GST-

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Virtual Cabinet Document Portal

From February 2017, BHT Partners will be using the Virtual Cabinet Document Portal ("Virtual Cabinet") which is a secure, online integrated document portal providing a more effective file sharing mechanism that eliminates the back and forth transmission of client documents. Fully integrated with our filing system, Virtual Cabinet will allow us to publish and send documents to our clients for review & signing in a simple, secure & audited manner.

Virtual Cabinet is an easy to use, highly secure system:

Accessible - access your documents wherever, whenever from multiple devices. Document Portal can be accessed directly from your PC, Mac, tablet or smartphone. Mobile & tablet apps are also available.

Secure document delivery - using bank-level AES-256 bit encryption, file transmission is secure and in full compliance with data protection laws.

Secure environment - when published to the Portal, documents are held in an environment where only the recipient can gain access. Multi-layer security and multiple firewalls provides top-level protection of data.

Audited document ownership - end to end audit process means every document transaction is verified when a file is sent, and when it is received.

Digital signatures - clients can digitally sign documents via the Document Portal, enabling electronic authorising of important and time sensitive documents in an efficient manner.

BHT Partners has chosen to use Virtual Cabinet as it provides far greater security than simply emailing

free. But, to ensure the sale is GST-free the parties have to agree in writing that certain strict conditions have been satisfied. If this issue is not dealt with, the vendor may be left with an unexpected GST liability that will basically come out of the sale proceeds.

Finally, consider the liabilities. For example, if you sell your business but not all of the staff are staying on with the new owners, the vendors will generally be responsible for the cost of redundancies and other employment costs.

Get your house in order

Most purchasers will undertake some form of due diligence on your business. If you understand what the likely purchasers are looking for, you have the opportunity to ensure that your business is positioned the best possible way. This may mean cleaning up your balance sheet or sorting out other parts of the business in advance of the sale. This way, you remove possible objections to the sale and improve your chances of achieving a favourable sale price.

Control the flow of information

During the sale process it's not unusual to be asked for a myriad of information about your business, its performance, and for your financials. Just remember that not all prospective buyers are buyers – many will be looking for market knowledge and intelligence. It's important to cascade information through to prospective buyers as required to limit the potential of over-sharing with competitors. Generally, sensitive information should only be released under due diligence once key terms have been agreed.

Warranties and indemnities

Warranties and indemnities are a standard part of most sales agreements to protect the purchaser against declining performance and significant changes in conditions from what has been declared. It is essential that you understand what you are signing up to even if the chances of the trigger event occurring are slim. This includes limiting the dollar quantum of any indemnity and its time period. In most contracts if you disclose information during the due diligence phase a warranty claim cannot be made against you – there can be an art in disclosure!

Restraints

Restraints are also a common part of a sale of business process particularly where the sale includes goodwill. Restraint clauses prevent you from selling your business then immediately starting a new business or becoming a part of a competitors business using the goodwill you established. Where restraint clauses are involved, it's important to understand how long you are going to be out of the market for.

Would you buy a house with friends or relatives?

It's not uncommon for friends and relatives to band together to capitalise on the investment property market. But what happens when it all goes wrong?

The Housing Industry Association shows that it now takes 2.04 average full time salaries to comfortably service a standard mortgage on a median priced detached house in Sydney. So why not pool your assets?

The tax issues

Capital Gains Tax applies to any change of ownership of a CGT asset, unless the asset was acquired before 20 September 1985 when the CGT rules first came into effect.

In general, if you jointly own an investment property, your individual exposure to CGT will depend on how the property is owned. If the property is held as tenants in common then any CGT exposure is in line with your ownership interest – this might be 50/50 or some other configuration. If the property is owned as joint tenants then each owner is treated as holding an equal interest in the property for CGT purposes.

Like CGT, how the expenses and income from the investment property is represented in your tax return also depends on how the property is held. For example, if you and a family member each own a 50% interest in the property you will need to split the rental income and expenses 50/50 when preparing your tax returns.

The main exceptions to this are where you are carrying on a rental property business (e.g., you own a significant number of rental properties and manage this in a business-like manner) in which case a partnership agreement will generally determine how the income and expenses are split or where one owner has borrowed money to acquire their interest in the property in which case they can

documents to our clients. Clients do not have to use Virtual Cabinet, however, where we have client permission to send documents by email, in future we will make the documents available to clients via the Portal.

When a document is published to a client using the Virtual Cabinet Portal, the client receiving the document will receive an email with a link to the document. If this is the first time you have received a document from the Portal, you will need to create and activate an account to hold the published documents. You will then be asked to log in with the details you have just set up. Once logged in you will be linked directly to the document. Alternatively, if it is not the first time you have published or received a document, you will just need to log into the Portal using your previously created account details.

We look forward to sharing a more efficient, streamlined and secure document distribution & authorisation process with our clients via Virtual Cabinet Document Portal.

claim a deduction for their own interest expenses (these do not need to be split with other owners who may have used their own savings to acquire the property).

The legal issues

Disputes between friends and relatives can occur very easily. One area that often triggers a dispute is when one party wants to take some form of action and the other doesn't – like selling the property or investing in expensive renovations. If the problem cannot be resolved the issue may be taken to court to force a resolution. State laws allow for one party (a co-owner) to make an application to the Supreme Court for the sale or partition of the property. Following an application under the partition laws of each State and Territory, a court may make an order for partition or sale of the property.

This is where a legal agreement, a Co-owners Agreement, to underpin the terms of ownership can really help – even for the best of friends or the closest of relatives. Legal issues covered include:

- Ways to resolve disputes;
- What share each party owns;
- When you can sell;
- Who pays the bills;
- What happens when a party dies;
- What happens if a party becomes bankrupt;
- When you can exit the agreement; and
- When you can buy the other party out.

ATO Key Dates - February to June 2017

21 February	January 2017 monthly activity statement - due date for lodging & paying.
28 February	Income tax returns for new SMSFs - due date for lodging and paying. Income tax returns for non-taxable large/medium entities as per the latest year lodged - due date for lodgement. Quarterly activity statement, quarter 2, 2016-17 - due date for lodging and paying. Quarterly instalment notice, quarter 2, 2016-17 - due for payment. Lodgement is only required if you vary the instalment amount.
21 March	February 2017 monthly activity statement - due date for lodging and paying.
31 March	Income tax returns for companies and SMSFs with total income in excess of \$2 million in the latest year lodged - due date for lodging and paying, unless due earlier. Income tax returns for individuals and trusts whose latest return resulted in a tax liability of \$20,000 - due date for lodgement. Payment is due as advised on their notice of assessment.
21 April	March 2017 monthly activity statement - due date for lodging and paying.
28 April	Quarterly activity statement, quarter 3, 2016-17 - paper lodgements - due date for lodging and paying. Quarterly instalment notice, quarter 3, 2016-17 due date for payment. Lodgement is only required if you vary the instalment amount. Superannuation guarantee contributions for quarter 3, 2016-17 - employers must make contributions to the fund by this date.
15 May	2016 income tax returns for all other entities that did not have to lodge earlier - due for lodging. Company and SMSFs to pay where required. Individuals and trusts to pay as per their notice of assessment.
21 May	April 2017 monthly activity statement - due date for lodging and paying.

26 May	Quarterly activity statement, quarter 3, 2016-17 - due date for lodging and paying if you are lodging via BHT Partners.
28 May	Fringe benefits tax annual returns - due date for lodging and paying where required.
21 June	May 2017 monthly activity statement - due date for lodging and paying
30 June	Superannuation guarantee contributions must be paid by this date to qualify for a tax deduction in the 2016 financial year.

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