What is the right transaction structure for you?

Ultimately, your business is only worth what someone is prepared to pay for it, but the right approach to negotiating a sale can have a big impact on the final valuation.

If you are thinking of buying or selling a business then the valuation is a key starting point. Professional advice from your accountant or a corporate finance adviser is always recommended to ensure that the valuation is fair and reasonable and supported by sustainable financial performance.

Getting the structure of the transaction right is key to maximising value

The transaction structure should not be overlooked in any discussion regarding valuation. A properly structured deal can ensure that the sellers maximise post-tax value and, for the buyer, achieve the right allocation of risk and reward between the parties.

You will need to consider:

- **Share sale versus asset sale.**
- **Earn-out; terms and interest rate on financing and on any deferred consideration element.**
- **Liabilities assumed by the acquirer.**
- **Employment contracts.**
- **Non-compete agreements.**
- **Assets to be retained by the seller.**
- **Share ownership and equity options, packages and relocation.**

Earn-outs and split transactions

An early stage, project based or high growth business is likely to secure a higher valuation if an "earn-out" based structure is accepted. A conventional earn out involves part of the purchase price being contingent on future business performance (typically based around revenues, gross profit or operating profit during a fixed period after the sale). This could involve a split share sale transaction, with the buyer acquiring a majority stake on day one and the remaining minority interest acquired at a future date at the relevant earn-out formula price.

There are a number of technical and commercial issues that need to be considered in the context of a long term earn-out of this nature. In particular, the balance of interests between the purchaser's desire to secure control of operational decision making as soon as possible and the sellers' need to protect the equity value of the shares to be sold needs to be carefully balanced. Specialist legal advice on the terms of the relevant transaction documents should be obtained.

Cash on completion

Cash on completion is often the preferred option for sellers; particularly for those who are looking for a clean exit. However, it is usual for the price paid to be subject to adjustment by reference to the cash and borrowings of the business and/or if the net assets (or net current assets/working capital) on completion are more or less than an agreed target figure.

Deferred payments

Buyers will sometimes look to finance the business purchase out of profit rather than a large upfront sum. Deferred payments mean that a proportion of the price is paid after completion of the sale; on a monthly, quarterly or annual basis. By accepting payments over a certain amount of time, the value of the business can often increase, but sellers should consider appropriate security or guarantees. An issue to consider in deciding on the form of deferred consideration (instalment payments, loan notes, etc) is the ability to defer capital gains tax until the deferred payments are made.

> **"A properly structured deal can ensure that the sellers maximise post-tax value and, for the buyer, achieve the right allocation of risk and reward between the parties."**

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Investment/elevator deal

If your business is growing and you want to remain invested but realise some cash now, then this could be an ideal solution. You effectively sell a proportion of your business but then remain involved alongside the incoming investor. You will then have the option to exit fully at a later stage.

The sale of a business has many financial and legal considerations for the owner/manager, including significant tax implications. The headline purchase price is only one component of the overall result.

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Contact our Business Team

James Williams, Cardiff
Partner
E: James.williams@blakemorgan.co.uk
T: 029 2068 6214

Martin Kay, London
Partner
E: Martin.kay@blakemorgan.co.uk
T: 020 7814 6919

Simon Staples. Reading
Partner
E: Simon.staples@blakemorgan.co.uk
T: 0118 955 3083

Stephen Archibald
Partner
E: Stephen.archibald@blakemorgan.co.uk
T: 023 8085 7052

Offices in:
Cardiff
London
Manchester
Oxford
Reading
Southampton

Contact us

in Blake Morgan LLP
w blakemorgan.co.uk

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