GST and Selling Your 'Going Concern' Business Assets

The introduction of GST in Australia 21 years ago brought a host of transaction types into the tax net, transactions for which there had previously been no tax consequence.

We are all familiar with the 10% GST impost that is added to everyday purchases such as groceries and petrol, and services provided by tradesman and professionals such as plumbers and accountants. Less well understood is the application of GST to one-off transactions and transactions involving the sale of intangible assets such as goodwill.

A business can be sold in a number of ways. If a business trades as a company, for instance, the owner can choose to dispose of either their shares in the company or the shareholders could arrange for the company to sell its assets, including the intangible goodwill.

In the former scenario (sale of shares), GST is not included in the sale price and the seller is not liable for GST.

In contrast, if the seller disposes of the assets of the business only, GST may apply. However, the sale of a business' assets can be exempt from GST under certain circumstances. For instance, an exemption is available to certain sales of farmland.

More generally, the GST law provides an exemption from GST for the sale of a 'going concern'. 'Going concern' is an accounting concept that refers to the proposition that a business will continue as an ongoing operation into the future. This can be the case even if ownership of the business changes hands. GST law provides a set of specific conditions satisfaction of which allows the seller of a going concern to be GST exempt.

Among the conditions the seller must satisfy to qualify as a going concern is that the seller must provide <u>all of the things necessary</u> for the continued operation of the business. Satisfaction of this condition can be far from straightforward. Must the seller include among the assets sold, the right to occupy the premises from which the business currently trades? What if the business is part of a larger enterprise? And what obligations do the buyer and seller have? Do they both have to be registered for GST? Must they agree for the going concern exemption to apply?

Failure to meet the conditions in the GST law relating to the going concern and other concessions may result in an unwarranted GST liability that may not be recoverable from the buyer.

If you are considering selling your business, contact the Tax Consulting team at Nexia Canberra to discuss GST and other tax consequences including the concessions available in relation to capital gains. A small piece of advice could lead to substantial tax savings.

Roger Karlsson
Senior Tax Manager