

## Tax Considerations when Selling your Business

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Most business owners pay their fair share of taxes while running their company. When it comes time to sell the business, most owners are seeking tax strategies to minimize taxes paid on their gain. We know that tax considerations are a major driver of any commercial transaction, especially M&A transactions. So, what should a seller keep in mind when considering a sale? First, before going into the market and soliciting letters of intent (LOI), sellers should update their estate plan and engage in pre-transaction tax planning. Ideally, this planning should be finalized a year in advance of a sale. The closer to the sale, the less tax planning opportunities available. Estate planning strategies including gifting and otherwise transferring interests to reduce wealth received directly by the seller. Pre-tax planning may include reorganizing the structure of the business or changing tax elections. Once the seller receives an LOI, the proposed structure of the transaction becomes paramount for the seller's tax planning. For example, structuring the transaction as an equity purchase likely could result in long-term capital gains treatment for the seller. An asset sale structure could lead to a mixed result of ordinary income as well as capital gains for the seller, depending on how the purchase price is allocated. Most times, a change in structure that benefits one party is a negative for the other party. Thus, the seller must have competent legal counsel versed in M&A and taxation issues. Further, how a purchase price is paid to the seller may have implications on timing as well as the treatment of the income. Monies paid overtime may lead to tax on the income being deferred to later years. Monies paid in forms such as for employment or consulting services or in consideration of a restrictive covenant likewise could have particular tax implications. In summary, selling a business is most times the largest financial transaction for an entrepreneur. Making certain to understand the tax treatment and implications at the earliest is paramount. After all, for any entrepreneur, the bottom-line net amount is what ultimately counts, not the top-line valuation.