## Getting sale ready:

Often when business proprietors are approaching their 50s they are already giving some thought to business succession issues.This may take different guises. If you have younger shareholders or the potential to bring in employees as shareholders, this may offer you an exit strategy that can be implemented over time. However, if you are not in that situation, you may be either looking at a sale of business or sale of shares in the next few years. If you are looking at a sale in the next few years, it pays to start giving some thought to getting your house in order from a due diligence perspective and obtaining tax advice on the small business capital gains tax concessions that may be available to you.

At the point that you are sale ready and have concluded an in-principle terms sheet with a buyer, the buyer will instruct its accountant and lawyer to conduct due diligence on the business, and if it involves, a sale of shares, the company itself.

Generally speaking the 'cleaner' the operation of the business and the company is, the less issues will be identified in due diligence and the smoother the sale process will be.

If there are areas of risk that are of concern to a buyer then this can play out in a couple of ways:

- If the issues can be rectified by undertaking legal work, then this is an obvious way to go to enable the buyer to get comfortable with the transaction.
- In other instances, depending upon the particular issue of concern, this may not be possible, either because it is an historical issue that can now no longer be fixed, or due to commercial sensitivities with the counterparty (for example, customers, suppliers, the landlord or employees) it is not an option that a vendor wishes to explore. In those circumstances this can substantially add to the vendor's transaction costs and lead to lengthy negotiations regarding warranties and vendor indemnification or worse still, a purchase price reduction.

In the case of a sale of shares, examples of areas of concern that are often identified from due diligence include:

- Loans from the company to shareholders or shareholder associates that are not compliant with Division 7A of the Income Tax Assessment Act;
- Irregularities with the issue of shares or share transactions;
- Tax issues, having regard to the tax treatment of past activities of the company (for example, the claiming of R&D grants);
- Problems with contracts the company has with its customers, for example, a termination right by the customer on a change of control of the company (which will arise on the share sale transaction taking place);
- Problems with contracts the company has with suppliers, for example, a termination right of the supplier for convenience on short notice;

### Health check review

In order to get a company sale ready, it is often beneficial to have a legal review undertaken in order to identify areas of risk and the steps that can be taken over time to mitigate those risks in order to present a 'clean' company and business that is attractive to buyers.

We offer a 360 business legal review for a reasonable fixed price, looking at 4 key areas:

- Your customers and suppliers;
- Your people;
- Your intellectual property; and
- Your lease.require a sale of all of the shares to a third party.