Sale and purchase process for share deals in care

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Pre-acquisition agreements

Seller: Once you have accepted an offer, it is sensible to agree a short "Heads Of Terms" document with the buyer. This will help set expectations for the sale and will cover price, financial structure, timescales, confidentiality of your information and whether you are willing to offer an exclusivity period

Buyer: You may wish to seek protection from rival buyers by seeking an exclusivity commitment from the seller. We advise that this is dealt with in the "Heads Of Terms" for the reasons described opposite and that your tax advisor is engaged in this process.

Due diligence

Seller: To keep the completion timescale on track, it is vital that you are well-prepared with responses to questions the buyer will ask and with compliant and complete documentation. Our experience has seen that very often the same issues crop up, causing delays, additional costs and opportunities for buyers to re-negotiate prices and request retentions.

Buyer: It is vital that your advisors ask the right questions, particularly in relation to areas of likely risk such as staff liability. If you have third party funding we will need to report this to your lender's solicitor and answer any queries they have. If issues arise during due diligence or there are concerns about a seller's financial standing to compensate a buyer in the event of a claim, it is common to ask for a retention of part of the purchase price.

Documenting the transaction

Buyer: The Share Purchase Agreement is a lengthy document prepared by the buyer's solicitor. It would include a tax deed and lengthy warranties to cover all aspects of the company and its business.

Negotiate and agree the share purchase agreement

Seller: The lengthy Share Purchase Agreement will need to be reviewed and negotiated if necessary. We will help you limit the scope of the warranties and negotiate limitation of your liability.

Disclosure letter

Seller: We then need to prepare the disclosure letter. A disclosure letter is prepared by the seller to identify and make known to the buyer any exceptions to the warranties given by the seller in the Share Purchase Agreement.

Buyer: Our job will be to review and negotiate the disclosure letter prepared by the seller. The seller will give certain warranties in the Share Purchase Agreement to you. The disclosure letter "discloses" information to you where a warranty is untrue or misleading, or where the warranty requires further information or documentation to be provided. You will be deemed to buy the company on the basis that you are aware of the disclosure and will not be able to make a claim if you subsequently suffer loss.

Tax Deed

Seller: Usually the Share Purchase Agreement will contain tax warranties and tax covenants given by the seller in favour of the buyer. The tax deed is a contractual mechanism for the buyer to recover from the seller an amount that reflects tax liabilities of the company being bought. We shall liaise with your tax advisor and/or accountant to negotiate the deed.

Buyer: A tax covenant is given by the seller to you for the company's unpaid pre-completion tax. It provides protection to a buyer against unforeseen tax liabilities of the company. We shall liaise with your tax advisor and/or accountant to negotiate the relevant schedules to safeguard you from future liability.

Ancillary documents

Seller: A number of ancillary documents will usually be required in addition to the Share Purchase Agreement and the disclosure letter, including board minutes, resignation letters and Companies House documents.

Buyer: Consider whether settlement agreements and new service agreements are required for any exiting or remaining directors.

Pre completion

Seller: Agree the final form of the Share Purchase Agreement and other transaction documents with the buyer.

Buyer: Ensure your funding is in place in order to complete the transaction.

Funding

Seller: Check the buyer has its funding ready to complete. Agree the completion funds flow.

Buyer: Agree the completion funds flow and make sure any third party funds are ready for drawdown.

Exchange and completion

Seller: Usually exchange and completion are simultaneous, but you should consider whether you will require a split exchange and completion to allow time to inform staff prior to completion.

Buyer: Usually exchange and completion are simultaneous, but you should consider whether you will require a split exchange and completion.

Post-completion commercial considerations

Buyer: A number of post completion matters need to be attended to e.g. arrange for the stock transfer form(s) to be submitted to HMRC for stamping, filings with Companies House, write up company's statutory registers etc. If the transaction involves a completion accounts mechanism, diarise the key dates.

Post-completion CQC matters considerations

Buyer: Inform the CQC of the changes to the company's nominated individual, shareholders and directors.