

SELL THE HOME, BUT AVOID A TAX TRAP

A simple tax election can save a fortune in unexpected bills for the vendor of a care home, but the details need to be agreed between the parties before completion of the sale. Ian Sutton of Suttons Capital Allowances explains.

Selling a business may well be the biggest financial transaction we ever undertake. Inevitably, for such a major one-off transaction, we will depend on our various professional advisers in various ways: gaining the best possible value, minimising any resulting tax liabilities, and ensuring that nothing comes back to haunt us once we have left it all behind.

There is one simple step to take, however, that all too often gets overlooked, even though it is neither difficult nor expensive, and even though it can potentially save a fortune in tax bills. The reason it is missed is that it can fall in a grey area between the various professional advisers, a no man's land where the accountant and the lawyer each assumes the other is dealing with it. It is also an area that some advisers are less familiar with and it sometimes gets simply forgotten – until it is too late.

The step in question is known as a “fixtures election”. The election ensures that the seller of a business property is completely protected against an unexpected clawback of capital allowances that have reduced tax bills in the past. Whenever the owner of the care home has claimed allowances for fixtures that are part of the property, he should give serious consideration to protecting the value of those allowances at the time of sale. In tax terms, a well drafted election could easily add ten per cent to the net-of-tax value of the business. More realistically, failure to sign a valid election could produce an enormous tax bill based on the final set of trading accounts before the sale – whether or not they showed a trading profit.

Any business vendor should normally ensure that the purchaser gives a legal commitment to sign an election in relation to the fixtures in the property. The figure to go into the election may have to be negotiated as part of the whole legal process. It is worth it, though, as the vendor can then put the books away after the sale, safe in the knowledge that the sales proceeds figure he must use in his capital allowances computation is fixed and cannot be challenged, either by HM Revenue & Customs or by the purchaser of the property. The purchaser will also gain certainty, potentially saving professional fees (and negotiations with the taxman) further down the road.

Both parties need to take care to ensure that the election is valid, and there are a few simple hoops that must be jumped through. This is not technically difficult, but a wrong step that invalidates the election could produce a potentially catastrophic outcome for the vendor.

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