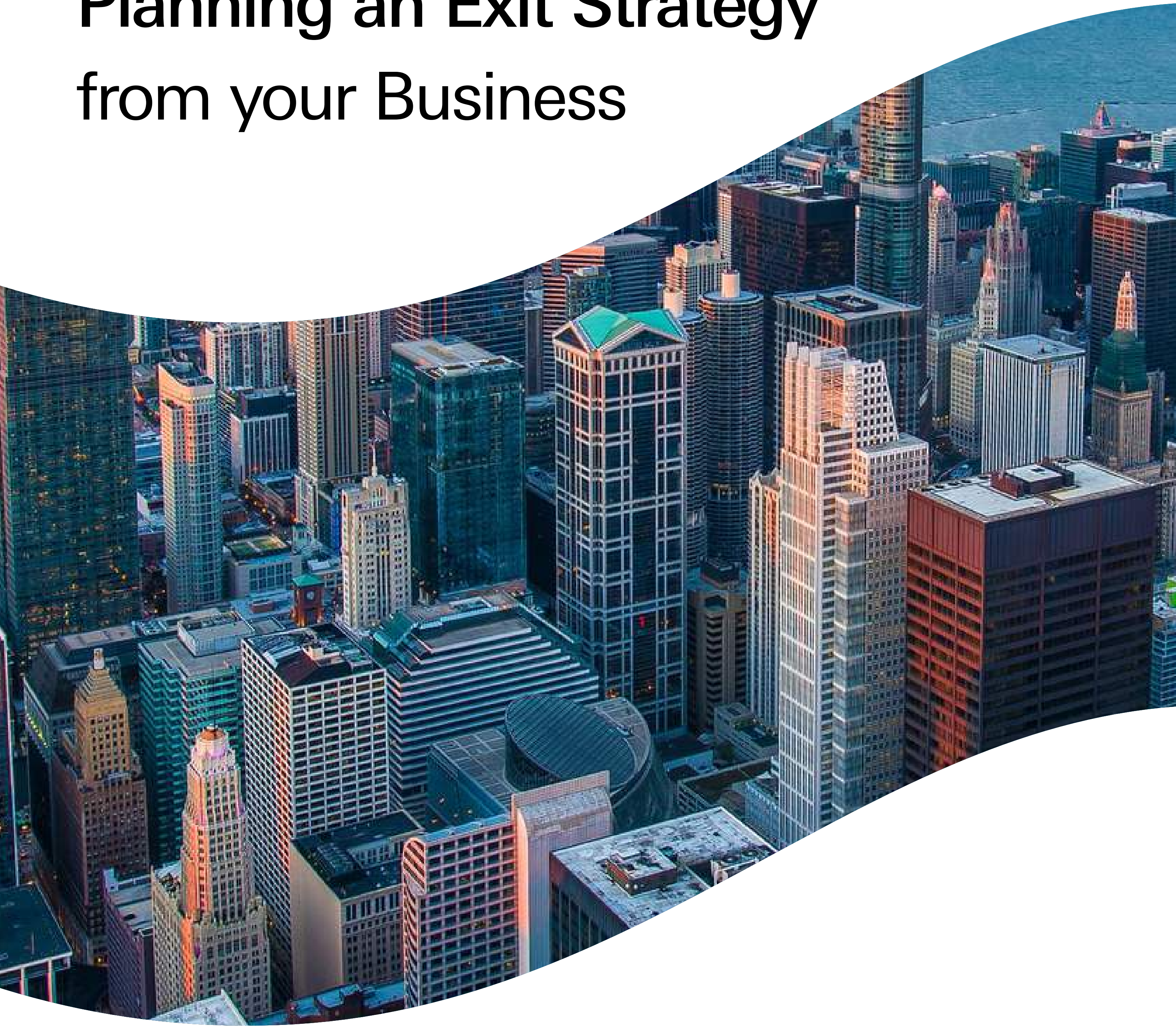
Planning an Exit Strategy from your Business



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We are very often asked, what tax planning options might arise prior to, or in the course of, the sale of a business? This very much depends on the particular circumstances of each company or individual. It is not possible to fully explore all of the possibilities in this brief article, however, some of the most common considerations should include:

Ex-Gratia Termination Payment

An ex-gratia termination payment is a tax-free payment that may be paid to departing staff and/ or company directors at the time that they exit a business by reason of redundancy, resignation, retirement or otherwise. There are 3 formulas used to identify the max tax free amount that can be paid. This amount will depend on recent remuneration levels, length of service, and existing pension value at the time of their departure. This can be a very tax efficient means of securing a tax-free benefit for employees, family members involved in a business, as well as for shareholding Directors.

By way of an example, if an individual has a salary of €100,000, has 20 years' service, and has no occupational pension entitlement, they could receive an ex gratia termination payment of up to €133,333 which would be completely free of taxation for the individual, and would be a tax deductible expense of the employer company.

Pension Contributions

Pension contributions can often be prioritised and maximised prior to a business sale. This can achieve a tax efficient reduction of the company's cash reserves, and achieves an economical transfer of company's assets to those now owned personally. Depending on individual circumstances, it can often be possible to contribute well in excess of €100,000 per annum to each individual employees'/ directors' pension scheme, and sometimes the maximum permitted funding level can be much higher than that.

Tax Reliefs Applicable to a Sale of Shares

A number of tax reliefs may be available in the event of a sale of a trading company, these include the following three reliefs from Capital Gains Tax;

Retirement Relief

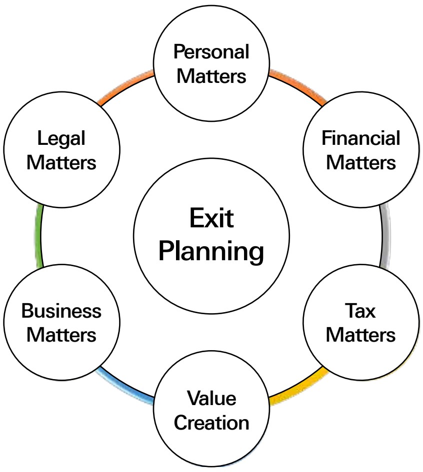
In certain circumstances, Retirement Relief from CGT gives exemption on a gain made by an individual on the disposal of his/her business assets from Capital Gains Tax, (CGT). An aggregate lifetime limit applies to disposal proceeds that can qualify for Retirement Relief, (this limit is €750,000 for individuals aged 55-65, and €500,000 for those over 65). However, if a disposal is made to an individual's children, no restriction applies to the amount of disposal proceeds that can be received by an individual aged 55-65, and a €3,000,000 limit applies to those over 65.

The qualifying criteria are as follows;

- The disposal must be made by an individual who is at least 55 years of age at the time of the disposal
- Assets disposed of must be "qualifying business assets"
- Assets must have been owned by the individual for at least 10 years preceding the disposal
- The individual must have been a director for 10 years, at least 5 of which he or she was a full-time working director.

"The definition of a 'full-time working director' means a director who is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity."

It should also be noted that where relief is claimed in relation to a disposal to a child, any further sale by the child of the assets within 6 years could trigger a claw-back of any relief granted. In addition, Finance Act 2017 introduced a provision which prevents Retirement Relief from being claimed where the shares are sold to a separate company which is controlled by a Connected Party.



Entrepreneur Relief

This relief was originally introduced in the 2013 Finance Act. It applies to individuals who are disposing of business assets of a qualifying enterprise, with qualifying disposals now liable to a reduced Capital Gains Tax of 10%, subject to an overall lifetime limit of gains amounting to €1 million. The standard CGT rate of 33% will apply to any gains made in excess of the lifetime limit.

In order to qualify for the reduced CGT rate of 10%, an individual must have owned the business assets for a minimum period of 3 years prior to disposal/ sale. The definition of a "chargeable business asset" includes shares in a company whose business consists wholly or mainly of carrying on a qualifying business. A qualifying business is any business other than the holding of assets as investments, or the holding and development or letting of development land.

If you are selling shares, in order to qualify for the relief you;

- Must own not less than 5% of the shares in the qualifying company
- Must be a director or employee of the qualifying company in a managerial or technical capacity
- Must spend at least 50% of your working time in the service of the qualifying company
- Must have served in that capacity for a continuous period of 3 years in the 5 years immediately prior to the disposal

Participation Exemption/Substantial Shareholding Relief

This relief results in a complete exemption from Capital Gains Tax for parent companies that are selling shares in a subsidiary company, therefore resulting in a "Nil" CGT liability arising on the disposal of qualifying shares. It is available where a parent company sells shares in its subsidiary company, provided the following requirements are met;

- **A** The subsidiary company whose shares are sold must be wholly or mainly a trading company, or the corporate group as a whole must be wholly or mainly a trading group. (ie: the majority of income and profits that are trade related rather than derived from investments)
- **B** The selling company, (parent company), must have held at least 5% of the subsidiary company's shares for at least 12 months in the three year period leading up to the sale,
- **C** The subsidiary being sold must be resident in an EU member state, or a country with which Ireland has a double tax treaty in place, and
- **D** The shares disposed must not derive their value from Irish situate land, buildings or mineral rights.

While this exemption would not secure sale proceeds into the personal ownership of an individual, however it can be a very useful planning tool where proceeds from the sale of shares can be transferred up into a parent or holding company with no Capital Gains Tax arising.

Get In Touch

We want to thank you for taking the time to read our newsletter. If you would like to find out more on any of the items addressed in this edition, feel free to contact us, we are happy to help.

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