

Essential Estate Planning Tips for Business Owners Preparing for a Sale

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As business owners prepare for the potential sale of a privately held company, thoughtful estate planning—including the strategic gifting of business interests—can provide significant tax and legacy planning advantages. However, timely implementation of these strategies is key to maximizing effectiveness and minimizing potential scrutiny by the IRS. When a sale is on the horizon, carefully considering the following key factors can help facilitate a seamless and efficient transfer of wealth.

1. **Timing of Gift Transactions**

To achieve optimal estate and gift tax outcomes, transfers of equity should occur *prior to any binding agreement*, ideally before the issuance of a Letter of Intent (LOI). Gifting interests *after* a LOI is executed may trigger IRS scrutiny under the “anticipatory assignment of income” doctrine, potentially nullifying transfer discounts and subjecting the appreciation to estate or gift tax.

2. **Valuation Discounts**

Valuation discounts can significantly reduce the taxable value of a gift and may be applicable when interests in a privately held business are gifted prior

to a sale. Common discounts include:

- **Lack of Control Discount:** Often applicable in circumstances where a minority ownership interest is gifted, and the gifted interest has limited influence over business decisions.
- **Lack of Marketability Discount:** Often applicable to account for the difference between an illiquid gifted interest that is privately-held and a comparable publicly-traded interest.
- **Differential Voting Rights:** Often applicable to account for limitations or the lack of voting rights for the gifted interest, as compared to other interests within a business' capital structure.

These discounts, when combined, may significantly reduce the value of the transferred interest, creating substantial estate tax efficiency for both the donor and the recipient and emphasizing the importance of gifting business interests before the sale of the company.

3. Use of Dynastic Irrevocable Trusts

Gifting business interests to a dynastic irrevocable trust, such as a Spousal Lifetime Access Trust (SLAT), Grantor Retained Annuity Trust (GRAT), or Intentionally Defective Grantor Trust (IDGT), can remove future appreciation from the grantor's taxable estate, while allowing the family to benefit for generations. These trusts can provide creditor protection, centralize management, and keep family wealth insulated from estate taxation for decades, or even perpetually in states that allow perpetual trusts.

4. Wealth Growth Outside the Estate Tax System

By transferring appreciating assets prior to a liquidity event, all post-transfer growth occurs outside of the grantor's estate. This can result in exponential estate tax savings, particularly in a sale scenario where value can increase significantly in a short time frame. Combined with lifetime gift and generation-skipping transfer (GST) exemptions, such planning can help preserve generational wealth in a tax-efficient manner.

Conclusion

Estate planning and gifting prior to the sale of a privately held business is essential

and can lead to significant tax savings and the preservation of wealth. Working with valuation experts, estate planners, and tax advisors, like the professionals at Anchin, will ensure compliance and maximize the opportunity to transfer wealth at a discounted value, grow it outside the estate, and secure a legacy across generations.

For more information on how proactive estate planning and gifting strategies can enhance the tax efficiency of your business sale and help secure your family's financial legacy, please contact your Anchin Relationship Partner.