

SELLING YOUR BUSINESS: STRUCTURING EARNOUTS AND DEFERRED PAYMENT PLANS

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The Devil Is In The Details

The great thing about selling your business with an earnout component or seller-provided financing is that these factors help you maximize your price, but they can be tricky to work with. What seems pretty simple early can get a lot more traumatic once the lawyers and accountants start to get the details down on paper.

This is a complex topic since no two deals are exactly the same. In this article I will outline some of the things you need to think about when putting an earnout deal together, but there is no substitute for getting some solid professional advice as early as possible.

A Note On The Special Case Buyer

Please note that this article assumes you are selling to an arm's length third party buyer. There are other articles on our website www.thompsonlaw.ca dealing with structuring transactions when you are selling to family members, existing partners, or existing employees or managers. If you are thinking about selling to a buyer from one of those categories, be sure to research materials devoted to that specialty buyer.

Make A Commercially Sensible Deal

After making sure you have the right people to buy your business, your next priority is to make a commercially sensible deal for both parties, which should include three main elements:

- *Make sure you agree on a fair price for your business.* You must resist any temptation either to sell yourself short or to put an excessive burden on your buyers. If the price is too low, you won't have been fair to yourself and may not secure what you need to meet your financial needs or goals. If the price is too high, you risk demoralizing your buyers after the deal is closed, resulting in a very unhappy buyer who will still owe you a lot of money, or even destroy the deal altogether. Buyers who come to realize that they have taken on a burden that is unfair or unrealistic have been known to walk away. Get good professional advisors involved and make a realistic assessment of what you have to sell.
- *Make sure the deal is financeable on reasonable terms.* Even after you get a deal on price, you need to make sure that is financeable on terms that are reasonable to both parties. This means not only third party financing, but that the business can carry the cash flow burden of the buyout. Accounting assistance is important, because pro forma income statements, balance sheets and cash flows are critical tools needed to test the financeability of your deal. You don't want to take too long to get paid, and your buyers don't want to be paying you off for years and years. You don't want to burden the business so much that it lacks the capacity

to meet new challenges or exploit new opportunities. On the other hand, you don't want to leave financing opportunities on the table. It is not an easy balancing act. However the right parties with the right attitude, working with good professional advisors, can make it work.

- *Make sure the deal is good for the business and all its stakeholders.* Ultimately, these deals are about the business. You can put a deal in place that you can look back on with pride as you see your business continue to thrive and prosper. Or you can put a deal in place that ultimately sets the business on a slow drift toward the rocks. Sometimes it is not clear which is which until well after the deal closes.

THIS IS AN 8-PAGE DOCUMENT.