

Selling or closing your SMALL BUSINESS



Closing down your business can be a legal minefield, writes John Corias.

As a small business owner, have you ever thought of the steps required to close down or sell it? When the time has come to either move on or retire, there are many factors that need to be considered and acted upon before you can consider yourself free from any further obligations.

It is especially important to consider these factors if you are closing down a business due to poor health or retirement or poor financial situations. After closing or selling your business, the last thing you are going to want to see is more paperwork requesting payments or even just administrative type requests.

Making the assumption that your legal team has taken care of the legalities of the actual sale to another owner and that all is going smoothly, let's take a look through some of the less thought of aspects of closing down your own business.

Lodging your final BAS return can often be the most difficult one to prepare and get right. Often the actual business sale may include GST if the business is not being sold as a going concern. Forgetting to include this GST on your final BAS is inviting the ATO into your life. Only after the business has been sold, all staff and suppliers have been paid and the last BAS has been lodged and paid should you de-register your roles with the ATO. This will normally involve cancelling GST, PAYG Withholding and your actual ABN. Remember that any expenses paid after this is done mean you will miss out on claiming the GST portion of that expense. Hence, it is vital to get the timing right without incurring any unnecessary extra administrative paperwork. If you then

decide to buy another business in the future using the same legal structure these roles can be easily re-activated by the ATO.

All insurance policies will need to be cancelled as well. The one that will impact small businesses the most is the typical workers' compensation policy. This should only be cancelled on the last day the business is trading to ensure staff is protected right to the very close of business. Then only after the policy is cancelled will you receive a final bill from your insurance company with a final wash up payment for the year to date. Making sure this is done will prevent a request for payment turning up from your insurance company when the policy reaches its natural annual expiry date.

When terminating your employees upon the closure of the business it is again vital that all final annual leave and long service leave entitlements are calculated and paid out before the staff members move on to other employment. This will also include any superannuation obligations for the final quarter that must be paid before the business is finalised. Calculating these final payments and obligations is an in depth process that requires a great deal of planning as entitlements can vary widely between different industries and even different states.

Selling a business is often, although not always, associated with the winding up of the legal structure. If your business was operated under a proprietary limited company then there will be many other factors to also consider. Ensuring that all loan accounts involving directors and shareholders are cleared by the most

tax effective legal means can have major ramifications on the individual direct and blog for or/shareholder's personal taxation affairs.

If you are selling or closing your business upon retirement there are numerous capital gains tax concessions that may be available to you. Some of these involving the making of superannuation contributions out of the proceeds of the business sale, if your sale is related to your permanent retirement. For a more in-depth analysis of these concessions you would need to seek out your trusted accountants advise, tailored to your own personal circumstances.

Finally, if you wind up or close a business in the middle of a financial year just remember that once 30 June rolls around that entity will still need to prepare and lodge a final income tax return. Any expenses for accountants and any anticipated tax bills should be calculated and factored into the decision-making processes that take place at the time of the business being sold. Only after this step, should Pty Ltd companies apply for winding up with the ASIC, as the company should now be free of any/all debts and not own any assets in its own right.

Selling a business need not be a stressful time in your life if handled properly with the right advice. Whilst looking ahead to the next chapter of your life, whether that be retirement, a new business venture or a return to paid employment, ensuring that all doors are closed will prevent any nasty surprises from popping up in your future.

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