Reducing taxes on transactions

Preplanning creates potential for significant savings

With the pace of tender offers, acquisitions, divestitures and the like at near-record rates, most executives will be involved in some form of business transaction in 2007. Every single one of those transactions will have tax consequences for both the buyer and seller. All too often, in the rush to get the transaction closed, tax considerations do not get adequate consideration at a stage where significant tax savings are possible.

To understand better how to capture potential tax savings in business transactions, *Smart Business* interviewed Sheldon Polish, a tax attorney widely recognized as one of the deans of transactional tax matters in South Florida.

Sheldon Polish
Tax Team member
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What should an executive understand, at a minimum, about the tax consequences of a business transaction?

Obviously, there is a tax consequence for every sale of an asset or stock. An executive should understand that there are significant opportunities to reduce and/or defer taxes when tax planning is done from the very inception of a deal.

Are you suggesting that such tax planning is often not done from the inception?

If you were to poll tax accountants and tax lawyers, they would almost all tell you that they are generally called in at a point where many of the potential savings have been eliminated due to the transaction structure that has already been documented. I consider myself fortunate to practice at a firm where the transactional lawyers do understand the importance of early tax consideration with the result being that we are able to regularly design tax effective transactions for our clients.

Why aren't tax advisers brought on board from the get go?

Well, clients are so often focused on just getting the deal done that tax consideration gets put off until late in the process, or sometimes even after the transaction. There is also a fear that tax professionals will unduly complex the transaction and thus put the deal at risk of not closing.

The reality is that competent tax advisers can identify preferred structures that can actually improve the economics for both parties — yes, for both parties — and thereby improve the likelihood of a timely closing.

Without getting into the nuances of the tax code, what is the key to creating tax savings in a business transaction?

Fundamentally, tax advisers look for opportunities to reduce the gain and thus the tax on a transaction, change the nature of the gain to one with more favorable tax treatment, or defer the recognition of the gain — all in ways that do not put parties at risk with the IRS or state tax authorities. The challenge is to do so in a manner that improves the economics of the transaction, preferably for both parties, and thus contributes to the likelihood of the transaction closing in a timely manner.

Competent tax advisers must stay current on the very latest means of structuring tax-free and partially tax-free exchanges that can be utilized advantageously with the benefit of preplanning. Like in many areas of the law, the law evolves so it is critical that buyers and sellers access deep technical tax expertise to work alongside their respective transaction lawyers.

What final words of advice on this subject would you give to a business executive?

Instead of viewing taxes as a subject as painful as a root canal, smart executives see quality tax planning as a means of increasing wealth at the entity level and ultimately for owners of a business. Taxes are not the essence of a successful business, but effective tax planning is an important means of improving the results from successful investment and development.

SHELDON POLISH is a member of the Tax Team of Berger Singerman and is resident in the firm's Fort Lauderdale office. Read more about how Sheldon and his colleagues are assisting business owners and companies to effectively deal with federal, state and local taxation, online at www.bergersingerman.com.