Tax due diligence

Whether you're buying or selling a business, a thorough tax due diligence is one of the most important steps in the transaction.

As a purchaser, it can significantly reduce the risk of your acquisition by identifying inherent tax liabilities in the target company at an early stage. As a vendor, it can ensure you receive full value for the business or assets you are selling. It will also ensure, as a vendor, you only provide warranties and indemnities that are absolutely necessary to provide the purchaser with sufficient protections.

Due Diligence Process

At the start of the tax due diligence process, the buyer's tax advisors will issue a questionnaire requesting information relevant to taxation, under all tax heads, typically for the last three years.

This involves a review of:

- The financial accounts for the past three years
- Corporation tax computations, tax returns and assessments
- Payroll records, tax returns and assessments
- VAT records, tax returns and assessments
- Records of other taxes relevant to the business
- Any revenue rulings issued to the company and details of any other correspondence with Revenue
- Any recent revenue audits together with any detailed details of issues arising, settlements made and all relevant correspondence

The process will also include a detailed review of tax relief claims made and any restructuring that has taken place prior to sale. Where pre-sale restructuring or any other tax planning has been undertaken by the vendor, it is imperative to carefully review such transactions to ensure the conditions of all tax reliefs claimed were met. It is also important to consider whether a change in ownership of the business will have any impact, for example, on the availability of historic losses to shelter future profits.

As part of the due diligence process, it is recommended that transactions with key stakeholders such as shareholders, key employees in an ESOP and existing investors are also considered.

Due Diligence Report

Following a thorough review of the information provided by the vendors, the purchaser's tax advisors will prepare a Due Diligence Report. This report will highlight all tax issues and inherent tax liabilities identified during the review process.

If a significant tax problem is identified, the transaction may not proceed or it may need to be renegotiated. If there are too many potential liabilities, the alternative may be for the purchaser to purchase the company assets or to hive out certain assets to a new company and purchase that new company.

The due diligence report will also form the basis for negotiation of the Tax Warranties & Indemnities that will be sought from the vendors. Generally, a General Tax Deed of Indemnity is given in respect of any potential unpaid tax liability that is identified and covers most tax heads. In some cases, where there is a particular tax issue identified, a Specific Tax Indemnity may be required.

If significant risks are involved, arrangements for the retention of consideration pending the appropriate review or elapse of the appropriate return periods until the relevant risk of review has passed may be required.

Key Benefits of the Due Diligence Process

The key benefit of a strong due diligence process is to enable a purchaser to proceed with a transaction with greater confidence, in the knowledge that any potential issues have been reviewed and considered. In some cases, the findings may be identified as potential 'deal breakers' and it is in the interests of all parties to identify these issues at the earliest stage of the process.