

GUIDE TO EXITING YOUR BUSINESS

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INTRODUCTION

There are many reasons why a business owner may want to exit their business. Some of the more common reasons given by business owners are:

- It's time to retire
- An offer for the business has been made that is hard to refuse
- The business is not making enough money to keep going
- The owner wants to cash in on the success of the business and use that money for other purposes
- It's time to pass the business on to family members or key employees
- There have been changes in family circumstances, such as illness or marriage breakdown
- There are changes in the business owner's circumstances, such as illness or old age

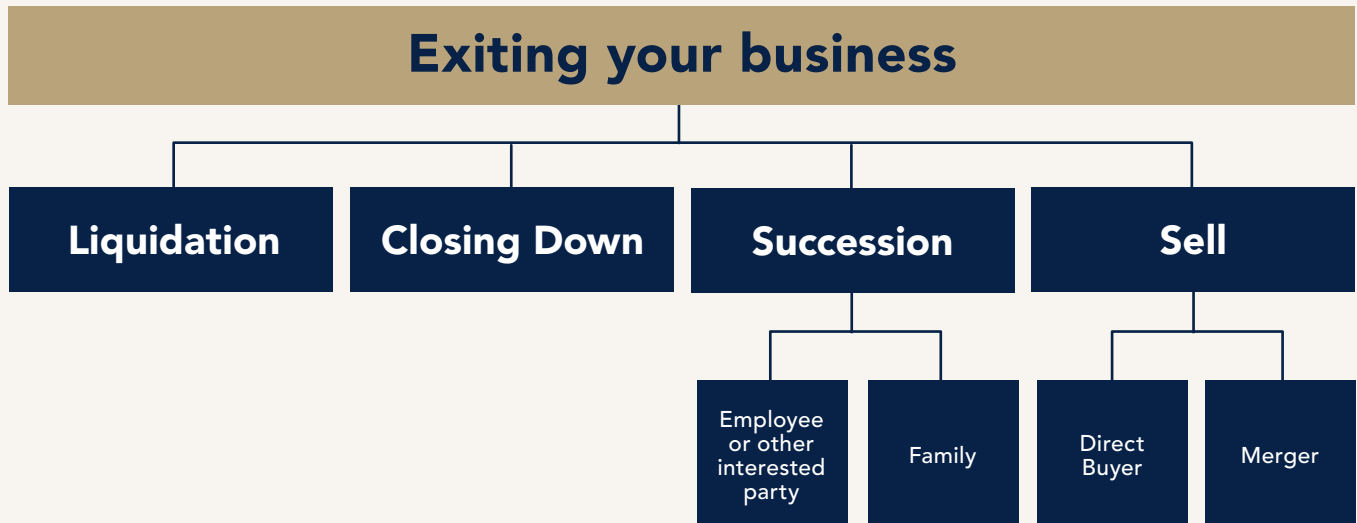
- The business is faced with increased competition and decide that continuing to operate the business is not worth the effort
- The owner is simply tired, and it is time to have a break
- The return on investment is too low, so the owner wants to try something different
- The business is in financial distress, and it is time to get out to avoid liquidation
- The business has failed, and liquidation is the only option.

Regardless of your reasons, planning your exit to maximise your business' value will probably be the most important decision made during your business's lifecycle.

You will undoubtedly improve the success of your exit strategy if you seek professional advice throughout the life of the business, not just at the time you want to exit.

WAYS TO EXIT YOUR BUSINESS

The diagram below provides an overview of the various ways to exit a business.



Before you choose your exit strategy, it is important to understand the basic characteristics of each option.

The exit strategy chosen will depend on your goals for the business, reason for leaving and your expectation for your post-exit involvement with the business, if any. For example, if you intend to retire and want to see the business succeed but are struggling with succession, you may choose to remain involved in the business in some capacity to help with the transition to the new owner.

Understanding the value of your business to others will assist greatly with identifying the business' prospects and define what a successful exit for you would look like. You can speak to a business valuer for guidance on the value of your business.

SELLING YOUR BUSINESS

The decision to sell your business may be easy or confronting depending on your circumstances. If you are operating a small business you will most likely have poured significant amounts of money, time and heart into your business over the years. Many small businesses involve family members, so often it is the main subject of conversation around the dinner table or even on holidays. It may therefore be difficult to imagine life without the business.

On the other hand, if your life as a business owner has caused more stress than joy, then you are more likely to embrace the sale of your business in the end.

Unlike most other business decisions that you have made over the years, this decision is final and there will be only one chance to get the sale process right. You will want to come out ahead financially, and negotiate a price on satisfactory terms. However, circumstances such a downturn in the economy or a poorly planned exit strategy may make it difficult to get the price you think is right.

REASONS FOR SELLING

The important question to answer when looking at selling an established business is being clear on your reasons for selling. There are many valid reasons that bring a business on to the market including:

- Retirement of the owner
- Another opportunity has emerged, and the owner needs the cash from the sale of the business to take advantage of that opportunity
- Ongoing innovation in the industry prompts a business owner to look for other opportunities that are simpler and not requiring as much energy.

Some reasons for selling may prompt more questions or concerns from a potential buyer. If you are selling for any of the below reasons, it will be important to emphasise the new opportunities or areas for growth for a new owner:

REASON	POTENTIAL OPPORTUNITIES FOR NEW OWNER
Declining business	An opportunity to reinvigorate the business and introduce new ways of doing things
Changes in market trends have reduced the need for the business's goods or services	Leverage off the established business name while developing new or innovative products or services and introducing new channels to reach customers
Influx of new competition	Opportunity to differentiate business through an established brand and quality offering
Expiry of a lease or franchise	Chance to move to new/better premises or rebrand the business but leverage existing assets and infrastructure
Ageing assets that are impacting the business's competitiveness	Emphasise other features of the business that give an advantage. Highlight opportunities to enhance the business's competitiveness through digital channels.
Decline in business reputation which may have caused a decline in sales	Opportunity to rebuild customer base by promoting change in business ownership
Poor cash flow	New opportunities or revenue streams that have not been explored by the current owner
Changes in government regulations and compliance requirements	Opportunity to adapt the business to the operating environment while taking advantage of existing business assets and infrastructure

Critical to the success of selling your business will be planning the sale. Potential buyers are typically looking for a business that is profitable, easy to manage, low risk and has good cash flow as a starting point. Long term planning will allow you to maximise the return on your investment into your business, make the sale less time-consuming, attract the right buyers and achieve your financial and non-financial goals of the sale.

Here is a list of actions to help you prepare your business for sale:

ACTION	DESCRIPTION
Determine when you want to sell the business	<p>It can take some time to sell your business from the time you first consider it. To ensure that you can maximise both your financial and non-financial goals, best practice is to have your exit strategy in mind before you start your business. Having said that, it is suggested that detailed planning on selling your business should start at least one year before you want to put the business on the market. This will give you time to complete the other recommendations in this checklist.</p>
Get your business in shape	<p>Use the pre-sale planning period to identify any key areas of the business that need improvement and implement changes. This could include:</p> <ul style="list-style-type: none"> • Creating or updating your policies and procedures. <p>This can add value to your business as it reduces the risk of the business's future success being tied to you and can make it easier for the new buyer to operate the business.</p> <ul style="list-style-type: none"> • Dispose of obsolete stock and other assets • Collect outstanding debts • Pay creditors • Encouraging employees to take leave to reduce employee leave entitlements. <p>CPA Australia has both a Business Evaluation Guide and a Guide to Improving Business Performance to assist you with getting your business in shape for a sale.</p>
Industry comparison	<p>Conduct research into the industry your business is in. You can use benchmark data to compare your financial results to similar businesses in your industry (in Australia, the Australian Taxation Office releases some basic benchmark data). This will help you identify areas of your business in need of attention before you put the business on the market, as well as areas of advantage that you may want to emphasise to potential buyers.</p> <p>Further, as potential buyers are likely to undertake this work as well, doing such a comparison will help you prepare for possible questions from a potential buyer.</p>

ACTION	DESCRIPTION
Valuation	<p>Before you go ahead and put the business up for sale, you need to research what the potential sale price will be.</p> <p>Some areas to consider include:</p> <ul style="list-style-type: none"> • What is the current market price of similar businesses for sale? • What will you include in the sale? <ul style="list-style-type: none"> - Leases - Key contracts - Ongoing business owner participation - Stock - Training for the new owner - Vendor finance • Asset valuation – will the sale include intellectual property, trademarks etc.
Consult the professionals	<p>Meeting early with professional advisors will also help you prepare for the sale. These advisors could include a business broker, accountant and lawyer.</p>
Prepare an information pack	<p>To give yourself the best opportunity to attract the right buyers and provide clarity over what will be included in the sale, preparing an information pack on the business is a must.</p> <p>You will not need to provide detailed financials as part of the initial information pack but you will need to be prepared to provide these as the sale progresses with serious buyers.</p>

PREPARING YOUR BUSINESS FOR SALE – BUSINESS INFORMATION PACK CHECKLIST

Please note that before disclosing a business information pack to a potential buyer, ask them to sign a confidentiality agreement.

ACTION	DESCRIPTION	COMMENTS / NOTES
Executive summary	<ul style="list-style-type: none"> • Description of your business • Customer profile • Highlight business strengths and weaknesses • Provide some high-level thoughts on how to overcome weaknesses • Highlight competitive edge/your business's unique selling proposition 	
Financials	<ul style="list-style-type: none"> • Profit and loss statements, balance sheets and tax returns for each of the past three years (further detailed financial information will need to be provided at the due diligence stage) • Ratios showing how your business performs against industry benchmarks 	
Policies and procedures	<ul style="list-style-type: none"> • Create or update your written policies and procedures 	
Asset list	<ul style="list-style-type: none"> • List of business assets and their value • Client list 	
Online and social media presence	<ul style="list-style-type: none"> • Links to all active business website/s and social media accounts 	
Legal structure of the business		
Strategic plan	<ul style="list-style-type: none"> • Include documentation showing how you have implemented the plan 	

ACTION	DESCRIPTION	COMMENTS / NOTES
Staffing	<ul style="list-style-type: none"> • Organisational chart • Documented roles and responsibilities • Key employee skills 	
Key contracts	<ul style="list-style-type: none"> • Long term customer contracts • Leases, including provisions to transfer leases to new owner • Finance facilities • Suppliers • Include date of expiry of contracts 	
Testimonials/reviews from suppliers and customers	<ul style="list-style-type: none"> • Demonstrate the value of the business name and reputation 	
Accreditations or awards	<ul style="list-style-type: none"> • Outline the strengths of the business 	
Industry compliance	<ul style="list-style-type: none"> • Include certificates of currency for compliance requirements such as accreditation from a standards authority 	
Valuation details		
Training to be provided	<ul style="list-style-type: none"> • List what training you may provide to the new owner and over what period 	
Non-negotiables	<ul style="list-style-type: none"> • List the items or conditions of sale that you will not compromise on 	
Preferred method of sale	<ul style="list-style-type: none"> • Contract of sale 	

WHAT IS YOUR BUSINESS WORTH?

The acquisition of a business typically involves a long-term investment of both time and money by the buyer with no immediate guarantee of return. Therefore, one of the most important things that must be considered when calculating the value (and thus sale price) of a business is its future earnings potential and profitability. In most circumstances this would be the basis on which a buyer assesses the reasonableness of the selling price.

To estimate the potential earning power of the business, the buyer will review past profits, past sales and operating ratios, as well as current and expected market conditions. To evaluate all this information properly, the buyer may engage an accountant who can investigate and analyse such information.

Valuation methods include:

- **Return on investment (ROI)**
 - *Sale price = (net annual profit before tax x 100) / ROI percentage.* Your accountant or business broker may be able to find an appropriate ROI for your industry. You can compare this to the ROI your buyer may have in mind
- **Asset valuation**
 - which is where you add up the value of the assets of the business and subtract the liabilities. This method may be used where the buyer is only seeking the assets of the business, rather than the business. Some asset valuation methods include the value of goodwill.
- **Price earnings ratio**
 - which is the value of the business divided by its profits after tax. The valuation equation is *Value = Profits after tax x Price earnings ratio.* Some industries have standard price earnings ratios, so speak to your business broker or accountant as to what this may be.
- **Entry cost valuation**
 - which is the cost of starting a similar business from scratch. Such a method could include the buyer determining the cost of purchasing the required assets, developing products or services and building a customer base
- **Market value**
 - *Sale price = turnover x industry multiple.* This method is most commonly used to value professional practices such as accounting firms. Seek advice on industry multiples and note that multiples do change over time.

Some industries have their own rules of thumb or formulas that can be used to arrive at the approximate value of a business. For example, supermarkets may be valued at five weeks turnover so that if a supermarket had \$20,000 in sales per week then the value may be about \$100,000. For cafes, potential buyers may look at the number of kilograms of coffee sold a week.

MARKETING THE SALE

There are various ways to let buyers know your business is for sale. The best channels will depend on the business and the circumstances, but the following methods are among those that are commonly used:

- promoting through a business broker or real estate agent
- advertising
- trade contacts such as suppliers, distributors, manufacturers etc.
- word of mouth.

In some instances, prior publicity of the sale can harm the future of the business making it less attractive to a prospective buyer and less profitable to the seller. If you are seeking confidentiality, then a business broker or real estate agent may be the best avenue, especially if they have a list of potential buyers they promote your business to, rather than advertise the sale to the public.

If you are having trouble attracting a buyer, or a potential buyer may be having second thoughts, vendor financing may help with the sale process. Vendor finance or earnout arrangements are a way of structuring the sale of a business to deal with uncertainty about its value. Under such an arrangement, the contract for the sale of the business provides for an initial lump sum payment by the buyer which is not the full sale price, and a right to the remaining payment is contingent on the performance of the business for a specified period after the sale.

In a standard earnout arrangement, the buyer agrees to pay the seller additional amounts if certain performance thresholds are met within a specified timeframe. In a reverse earnout arrangement, the seller agrees to repay amounts to the buyer if certain performance thresholds are not met within

LEARNING MORE ABOUT POTENTIAL BUYERS

Potential buyers will most likely carry out a due diligence on your business before making an offer to buy it. For this purpose, the potential buyers will require additional information on the business. Before you disclose any such information, you should always do your own due diligence on potential buyers.

As the seller, you are not obliged to complete a deal with a buyer without knowing a little about a potential buyer's background and their ability to meet commitments, especially if you are providing vendor finance (i.e. leaving some finance in the business). In such circumstances, it is important that you do a credit and character check on such a potential buyer.

As the seller, you must be convinced that the buyer is someone of good standing who will take over the business and look after the clientele and staff.

If the buyer has a history of business collapses, or perhaps a criminal record, then these matters may affect your decision to sell to that person. You should also seek evidence of the credit worthiness and financial position of the potential buyer, especially if you maintain an interest in the business, for example as part of an earn out arrangement.

The buyer must be able to put down a deposit to obtain the confidence of the seller. If the deposit is too low, then there may be an increased risk of the buyer not completing the purchase. Generally, a deposit of at least 10 per cent of the purchase price is expected.

DUE DILIGENCE

As stated above, you should expect and be ready for prospective buyers to do a range of due diligence checks on your business before agreeing to buy it. To help with the due diligence, they may engage a professional like an accountant.

Due diligence will involve a detailed investigation of every area of business starting from the financials down to production and even such things as what time the business is opened and closed. To keep this detailed information confidential, it is recommended that you require the potential buyer to sign a non-disclosure agreement prior to you providing such information.

Be aware, there are many negotiations that go to the due diligence stage only to fall through because of what is revealed during that stage. Unfortunately, there are many instances where sellers misrepresent the value of their business. It is sometimes found that the actual financials do not line up with what was initially given by the seller. Potential buyers who have been through such experiences are likely to approach the due diligence process with a much more questioning mind.

Part of the due diligence is to check the assertions you have made about the business to a potential buyer. It is therefore important that what you say about your business can be backed by verifiable evidence.

The following is a list of information that is usually requested in a due diligence review:

- Business plan
- Proof of business ownership
- Business licenses and permits
- Payroll summaries for one year
- Outstanding accounts payable
- Outstanding accounts receivable
- Current loan documentation
- Sales and supply contracts, including expiry dates
- Lease contracts, including provisions to transfer lease to new owner, lease expiry date and how future rent increases are determined
- Staffing details, including key staff
- List of customers
- Patents and trade marks
- Outstanding legal matters
- Insurance
- Marketing methods
- Stock (inventory)
- Asset listings and valuations
- Details of all chargebacks or “Owner’s Salary” in your financials
- Profit and loss statements for each of the past three years
- Cash flow statements for each of the past three years
- Balance sheets for each of the past three years
- Budgets
- Tax returns for each of the past three years

FINALISING THE SALE

You will, of course, want the greatest return for the years of hard work put into your business. The buyer, however, is interested only in the future potential of the business (or the net value of the assets if that's what they want). Therefore, both parties can put a different price on the same business with both numbers being "reasonable."

Before carrying out the final negotiations, be aware that the buyer will be fully informed of the book value of the assets and the maximum amount of money that he or she can pay for the business to obtain their required return on the investment.

Remember that negotiations will not be entirely in monetary terms. Other details such as training for the new owners and job security for your existing staff should also be brought into discussion. Other points to be agreed on include terms of payment, assistance from you during the transition, and the conditions and terms to be included in the sale contract. As a safeguard against any costly errors, you should always obtain legal advice on the drafting of a contract of sale.

Some key points that should be included in a typical sale and purchase contract are:

- A description of what is being sold
- The purchase price
- The method and terms of payment
- Assumption of tax liabilities arising from the sale of business
- A statement of how adjustments are to be handled (for example as to stock)
- The buyer assuming responsibility for the business from a certain date
- Warranties by the seller, if any (for example as to protection for the buyer against any false statements or inaccurate information supplied)
- The covenant of the seller not to compete within a certain time period or within a certain area
- The time, place and procedure for "closing the deal"

Selling your business – Key takeaways

- Understand your reason for selling and look for the opportunities you can highlight to prospective buyers
- Prepare an information pack for prospective buyers to highlight key selling points and information about the business
- Undertake due diligence of your potential buyers before entering any contract
- Seek professional advice – advisers can help you collate the information you need for a sale (such as financial statements), assist with contracts and negotiations as well as help you market the sale of your business

MERGER

A merger is when two or more companies agree that they want to go combine as a single business. Mergers are often driven by the competitive landscape. Strong companies will often seek out other companies to see if the combination of the two will create a more competitive, cost efficient operation than either one currently is. One of the key objectives of a merger is that the combination of the businesses will gain a greater market share and achieve greater efficiencies.

A merger does not necessarily involve equals. If one company is much larger than the other, a merger can still work. The whole idea of the merger is that the boards of each company agree that continuing the business alone is not the best option for either company, but by merging with each other it should benefit all parties.

Executing a merger is similar to selling the business. Two businesses will be combined into one - both companies may come together to create a new company, or the stronger business will act as a buyer of the other business. Therefore, it is important that both businesses plan and prepare as if selling the business. For more information, refer to the section above on **selling a business**.

Merger – Key takeaways

- Understand and identify the opportunities that a merger can bring
- Take the same steps you would take for selling a business noting that a merger does not necessarily involve equals but should be beneficial for all parties

SUCCESSION

If your business is a family business, you may wish to pass it on to a member or members of your family. You may also want to pass/sell the business to an employee/s. Succession is often an emotionally charged process that requires planning and collaborative effort between the owner and family members to be a success. It is therefore important to have a succession plan.

Generally, a family succession plan will have two main factors:

- Transfer of power – how will the management and control of the business be transferred over to the chosen family member(s), and over what timeframe.
- Transfer of assets – how will the wealth concentrated in the business be transferred to family members, and over what timeframe.

Within those factors, issues to consider include:

- whether it is a full or partial succession
- skills development of the people taking over the business
- communications to employees, suppliers, customers and other stakeholders
- business structure considerations
- tax, retirement, financial and estate planning issues.

When transferring a family business from an older generation to a younger generation, the older generation must get the value they deserve out of the business. This is one of those important aspects that needs to be negotiated between the parties. One of the best ways of achieving full value for the older generation is simply selling the business to family members.

In this case, an independent professional valuation should be put together so that both parties are happy. If selling the business in this way, it is important, before the completion of the sale, to establish what structure or structures the buyers will run the business under. At times, when an owner wishes to gift the business to more than one child, he or she may settle the business into a family trust and name the children as beneficiaries.

The business owner and successors stand to benefit from seeking professional advice on creating a succession plan (including formalising the role of the older generation should they remain connected to the business) and the ownership structure for the business.

PLAN FOR A SMOOTH TRANSITION

Here is a suggested approach to assist with a smooth transition:

Plan early	The earlier you plan for the succession, the more time you have to successfully implement the transition. The plan should be one that is flexible to meet changed circumstances, such as additional children, or their chosen successors not wanting to be part of the business.
Take your time	Family succession plans need to be well thought out and provide adequate time for a successful transition. Generally, a five-year plan for succession is suggested. This allows control to the next generation to be gradually passed over as they prove themselves.
Family	Often business owners leave their businesses to their children in equal shares to avoid favouritism. Unfortunately, some family members may not see eye to eye and the differences of opinions and arguments can end up hurting the business. An alternative may be for one successor to run the business and “buy out” the remaining beneficiaries.
Qualification/skills development	The beneficiaries to the business must earn the right to run the business and the succession plan should set out what experience is required in order to qualify to take over the business. That is, the successor needs to qualify by having the experience and hopefully working their way up in the business. This pre-requisite will help them build relationships and earn the respect of the existing clients, particularly older clients, employees and key stakeholders.
A Board	To assist settling potential difference of opinions amongst successors, you may consider setting up a Board of Directors of non-family members before the business is handed over. The incoming family owners will then be required to take advice from the Board. Given that the Board would be independent from the family, it is likely that any family disagreements on managing the business will be resolved with minimal impact to the ongoing operations of the business.

There are many problems that may arise in a business succession. The reality is that family members do not always agree and that what the business owner has in mind does not always coincide with what the family's desires are.

In any event, planning with whoever is being groomed to take over the business should start early.

Another important consideration is what are the business arrangements should one of the new owners leave (whether forced or otherwise). In such circumstances, putting in place a buy-sell agreement as part of the succession is essential to keeping the business going. Such an agreement should determine:

- the circumstances which allow the share of the business to be sold
- who can buy the departing owner's share of the business, and
- how the price for the departing owner's share will be determined.

Succession – Key takeaways

- Planning for succession should start early and consider what the arrangements will be once the transition occurs
- Succession of a business can be difficult to navigate with family and close relationships – seek independent advice for valuations and the succession process to ensure it is fair and transparent

CLOSING A BUSINESS

For some business owners, the best option is to simply close the doors, and sell the assets of the business and pay off the debts, retaining any surplus cash. This may be the case where the business is intimately connected to you and without your skills, there is no business and selling may not be an option. It may also be an option if you want to get out of a business quickly and there is little goodwill.

You will obtain far better value from your business by selling it off to a new owner so that you can obtain money not just for the value of the assets less the liabilities, but also value of the goodwill – you should explore all options before deciding to close.

Use this checklist to help prepare for the closure of your business:

ACTIVITY	COMMENTS / NOTES
Set a date for closing	
Notify employees and contractors of the closing date	
Conclude any ongoing contracts E.g. If the business has a lease, then arrange the closure at the end of the lease or come to an arrangement with the landlord	
Collect any outstanding debts and pay creditors	
Settle your legal and tax obligations	
Notify your bank, suppliers and associates of the closing date of the business	

ACTIVITY	COMMENTS / NOTES
<p>Advise all customers of the closing date of the business</p> <p>Develop a plan for how you will communicate this to this customers taking into consideration:</p> <ul style="list-style-type: none"> • not jeopardising any sales potential up until closing • maintaining positive rapport and goodwill with your existing clientele so they have the opportunity to find alternative suppliers with enough notice 	
<p>Sell off all the assets of the business and pay off all obligations, including any finance facilities</p>	
<p>Arrange for everything to be disconnected, such as telephone, power, etc if applicable</p>	
<p>File all the necessary tax returns and financial accounts</p>	
<p>Cancel your registration with the tax authorities</p> <p>Cancel any other registration, license and permits</p> <p>Cancel your company's registration</p>	
<p>Tie up any other loose ends such as closing the social media accounts of the business, closing the business's bank account and cancelling your domain name</p>	
<p>Keep necessary business records</p>	
<p>Close the doors, take the balance of the money remaining after paying all the debts.</p>	

INSOLVENCY

For some business owners, liquidating their business is the only exit option available to them, and often the decision to liquidate their business is made for them.

Business owners that are on top of their financial situation and act early and quickly when they find themselves in financial difficulty have a range of options available to them to either save or exit their business. Not knowing there is a problem, or not acting when you discover a serious financial problem can lead to liquidation being the only exit option available. This is something that you should try to avoid.

In short, a business is insolvent if they are unable to pay all their debts as and when they become due and payable.

Liquidation involves a liquidator being appointed to finalise the business' affairs, selling off business assets or the business itself, and distributing any available funds to repay creditors. They also investigate the company's affairs, including decisions taken by directors in the lead up to the liquidation. In Australia, directors can be responsible to compensate the company for matters such as breaches of directors' duties, insolvent trading or unreasonable director-related transactions.

Generally, liquidation occurs when the creditors of the company pass a vote to have the company liquidated.

INDICATORS OF INSOLVENCY

In Australia, the Australian Securities and Investments Commission provides the following useful **indicators of potential insolvency**:

- The company has a history of continuing trading losses
- The company is experiencing cash flow difficulties
- The company is experiencing difficulties selling its stock, or collecting debts owed to it
- Creditors are not being paid on agreed trading terms and/or are either placing the company on cash-on-delivery terms or requiring special payments on existing debts before they will supply further goods and services
- The company is not paying its taxes and/or employee entitlements
- Cheques are being returned dishonoured
- Legal action is being threatened or has commenced against the company, or judgements are entered against the company, in relation to outstanding debts
- The company has reached the limits of its funding facilities and is unable to obtain appropriate further finance to fund operations – for example, through:
 - negotiating a new limit with its current financier; or
 - refinancing or raising money from another party.
- The company is unable to produce accurate financial information on a timely basis that shows the company's trading performance and financial position or that can be used to prepare reliable financial forecasts
- Company directors have resigned, citing concerns about the financial position of the company or its ability to produce accurate financial information on the company's affairs
- The company auditor has qualified their audit opinion on the grounds there is uncertainty that the company can continue as a going concern.
- The company has defaulted, or is likely to default, on its agreements with its financier
- Employees, or the company's bookkeeper, accountant or financial controller, have raised concerns about the company's ability to meet, and continue to meet, its financial obligations

- It is not certain that there are assets that can be sold in a relatively short period of time to provide funds to help meet debts owed, without affecting the company's ongoing ability to continue to trade profitably
- The company is holding back cheques for payment or issuing post-dated cheques.

IMPACTS OF INSOLVENCY

Being bankrupted may affect your ability to earn income. There may also be restrictions on your future employment, future ability to run a business and even travelling overseas.

It can also affect your ability to obtain future credit and other legal rights, such as disqualifying you from managing companies and from being a director of a company.

In Australia, continuing to allow a company to trade while insolvent can have serious consequences for directors. There are various penalties associated with insolvent trading, including civil penalties, compensation proceedings and criminal charges (a fine of up to A\$220,000 or imprisonment for up to five years, or both).

Insolvency – Key takeaways

- A business is insolvent if they are unable to pay all their debts as and when they become due and payable. Not knowing there is a problem, or not acting when you discover a serious financial problem can lead to liquidation being the only exit option available. This is something that you should try to avoid.
- In Australia, continuing to allow a company to trade while insolvent can have serious personal consequences for directors
- Liquidation involves a liquidator being appointed to finalise the business' affairs – seek professional advice as soon possible.

OTHER ISSUES TO CONSIDER

There are a range of tax, legal and financial issues to consider when planning the exit from your business. These can be complex, and it is strongly recommended that you seek professional advice in preparing your business for sale and following the sale.

In Australia, the Australian Taxation Office has a **list** of the tax issues which you may face on exiting your business. These include:

- Cancelling your GST and ABN registrations
- Capital gains tax consequences of disposing capital assets
- GST issues of selling a going concern
- Small business capital gains tax concessions
- Tax consequences of an earnout arrangement
- Superannuation issues associated with contributing funds from the disposal of certain small business assets
- Tax consequences of any advances, loans and other payments or credits to shareholders or their associates
- Finalising tax obligations including finalising payments for your employees including pay as you go, superannuation and eligible termination payments

Key takeaways

- There are many reasons you may wish to exit your business – planning for your exit gives you the best opportunity to achieve a smooth transition and a larger return for your business on disposal
- It is strongly recommended you seek the advice of professionals throughout the process to give you the best chance of a successful transition out of business
- Look for warning signs and act early to avoid the risk of trading insolvently

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