

A good time for shareholder changes?

You would certainly be forgiven for assuming that the current economic climate is not one in which to be considering a transaction. Indeed, it's clear that the overall deal market has been significantly depressed in recent times. However, there are still situations where a current transaction may actually be advantageous to all concerned and we are seeing an increased interest in potential private shareholder transactions, as shareholders and companies alike look to capitalise on a timely 'win-win' opportunity in the market.



Why would a company want to buy back shares now?

If as a private business you have been considering buying out a minority shareholder, now could be an attractive time to be progressing this. Market valuations have fallen, making share buy-backs a more affordable option for companies than in the past. Other advantages include streamlining the shareholder base and simplifying governance, allowing the business to be as focussed as possible on performance.

Why would a shareholder sell at this stage of the market?

Share buy-backs of this nature are currently very tax efficient, so a transaction can also be an attractive proposition for an exiting shareholder. Provided certain conditions are met, H M Revenue & Customs (HMRC) accepts that a company repurchase of shares will be subject to capital gains tax in the hands of the vendor. This means the return will be taxable at a rate of 18%, and potentially 10% if entrepreneur's relief is available. This can be contrasted with the higher rates of tax payable on a dividend which are set to increase to 42.5% with effect from 6 April 2010. With speculation that capital gains tax rates may also start rising, there has never been a better time to take advantage of this opportunity.

With affordability increasing for the business, it is likely they may be more inclined to enter into a deal now, allowing minority shareholders the chance to extract their capital, without, for example, the risk of waiting for a longer-term potential sale of the business.

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Why now?

It's the fortuitous combination of both share prices and tax rates that gives rise to the potential for everyone to benefit from a current transaction. And this may be a relatively short-lived window of opportunity, as a change in one or both factors could displace the balance.

What next?

If this could benefit your company, you may require an independent assessment of fair market value of the shares for negotiations between the company and shareholders. In many instances valuation requirements are governed by the Articles of Association. Whatever the circumstances, companies and shareholders will require the support of expert business and share valuers to identify an appropriate and fair value. We can also provide support on the tax treatment – in most instances we would recommend approaching HMRC to obtain advance clearance that the capital treatment will apply, as this gives shareholders the certainty they require on the tax position.

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