Soccer scenarios

Company purchaser or company seller? **HEATHER MILLER** has a game plan to make sure that your team comes out on top.

Pali Rao/Getty Images

I think I should warn those readers who saw the big shiny pictures of the footballers and expected a gloriously witty tax article that uses the current state of the England team as an analogy for buying and selling a business ... you're going to be a bit disappointed. You see, I know nothing about football. Less than nothing in fact, as the information I can offer would probably put me into a 'negative points' situation with any ardent follower of the beautiful game. I can name a couple of the England squad; there's Mr Christine Bleakley, aka Frank Lampard aka 'had a couple of kids with Elen Rivas who then dated Peter Andre'. Also, I believe there is an ex-Mr Cheryl Cole who goes by the name of Ashley. Didn't he shoot a work experience boy with an air rifle? That is where my football-related conversation pretty much dries up, I'm afraid.

That said, it did occur to me that, what with this big Euro 2012 tournament thingy on its way, it would be an apt theme to try and incorporate football into an article, not least because everyone must surely have overdosed on Olympic fever by now. And so, let's imagine that a Mr Hodgson (okay, so I pay a little attention to the news too) has built up a business selling football memorabilia over the past 20 years. Alas, his children didn't inherit his passion for the sport and so as he nears retirement he decides to sell his business to a third-party buyer who goes by the name of Mr Low, a German businessman who settled in the UK some 30 years ago. When looking at this kind of transaction from the buyer *and* the seller's perspective, who will come out on top when it comes to the tax implications? Its England versus Germany, but not as we know it...

Two possible scenarios

This article will focus on two possible scenarios: the first involving a simpler set-up that sees Mr Hodgson as the direct owner of 100% of the share capital of England Ltd; the second involving a holding company of which Mr Hodgson is the sole shareholder, which in turn owns 100% of England Ltd. As we will find out along the way, the structure used can have a significant impact on the transaction.

So what exactly does England Ltd have to show for its 20 years of trading? Well, ***England Ltd – Valuation*** summarises the company's position, but let's look at the finer detail of each aspect of the company's balance sheet in turn:

- *Goodwill.* Mr H's company has built up a loyal following over the years, and as part of the due diligence in relation to the sale, this goodwill has been valued at £400,000.
- *Trading Premises.* Mr H was offered the opportunity to buy the freehold of the property from which he trades for £250,000 back in 2007, alas, when the property market was at its peak. England Ltd purchased the property and a recent valuation shows it has a market value of £200,000, thereby standing at an unrealised capital loss of £50,000.
- *Investment Property.* England Ltd also owns an investment property purchased for £120,000 in 2005 out of rolled-up company profits. It has a current market value of £125,000 and produces rental profits of £3,500 per annum.

KEY POINTS

- Practical example of trading company and accounts.
- What is a disposal of business assets?
- A trading company and the meaning of substantial.
- The tax effects of goodwill and losses brought forward.
- Holding companies and substantial shareholdings.

ENGLAND LTD – VALUATION

Company valuation per balance sheet at 31 March 2012.

Asset	*Value £*	*Percentage of total*
Goodwill	400,000	50%
Trading premises	200,000	25%
Investment property	125,000	15.6%
Cash	75,000	9.4%
Total	800,000	100%

- *Cash*. There is £75,000 in the company's non interest bearing current account, which Mr Hodgson had earmarked to invest in Euro 2012 tournament souvenirs and memorabilia, but these have not yet been ordered.

Aside from the balance sheet, the following detail is also pertinent:

- Despite England Ltd having a healthy turnover of £150,000, a trading loss of £25,000 for the year to 31 March 2012 has arisen as the result of a costly, but unsuccessful, advertising campaign.
- England Ltd has been VAT registered for many years and has a squeaky clean record with HMRC.
- The sale of England Ltd to Mr Low is due to take place on 6 October 2012.

Scenario 1 – 100% ownership

In the first scenario, Mr Hodgson personally owns 100% of the share capital of England Ltd.

Let's face it, after years of flogging football shirts and commemorative tea cosies to the public, Mr Hodgson is looking forward to putting his feet up and watching a few matches himself. He might even like to travel abroad to see his favourite team ... erm, in an attempt not to alienate anyone, I will assume that Neil Warren isn't the only person reading this article and perhaps you, the reader, can insert your chosen team's name here.

After building his business from nothing, Mr Hodgson considers the company to effectively be his retirement fund and he would quite like to lose as little as possible of the sale proceeds to the taxman, and so at this point we should consider the most obvious relief from capital gains tax: entrepreneurs' relief. To qualify, there must be a material disposal of a relevant business asset and TCGA 1992, s 169I(2) tells us that:

'For the purposes of this chapter a disposal of business assets is:

(*a*) a disposal of the whole or part of a business;

(*b*) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business; or

(*c*) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company...

...A disposal within paragraph (*c*) of subsection (2) is a material disposal if condition A or B is met.

(6) Condition A is that, throughout the period of one year ending with the date of the disposal:

(*a*) the company is the individual's personal company and is either a trading company or the holding company of a trading group; and

(*b*) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.'

Trading status

As Mr Hodgson is the sole owner of England Ltd, and has been for many years, it is clear that if anything is going to come a cropper with the claim, it is the trading status of England Ltd, which could potentially be prejudiced by its cash deposits and investment property. This brings us to the question of just what is a trading company as required by s 169I.

TCGA 1992, s 169S states that '"trading company" and "trading group" have the same meaning as in s 165 (see s 165A)' and s 165A(3) states that '"trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities'.

Although not written into legislation, HMRC have issued guidance in their *Capital Gains Manual* the shape of CG64090 ('Entrepreneurs' Relief: trading company and holding company of a trading group – the meaning of "substantial"') that explains the following key points:

> ***“ It is clear that if anything is going to come a cropper with the claim, it is the trading status of England Ltd. ”***

'"Substantial" for this purpose means more than 20% and this is measured with reference to:

- the turnover generated from non-trading activities;
- the assets on the balance sheet when compared with those relating to the trade and; the value of non-trading assets measured against the total asset value which in practice would include non-balance sheet assets such as goodwill; and
- the time spent and expenses incurred in managing the non-trade activity.'

In the case of England Ltd, the investment property and cash on the balance sheet should be ringing a few alarm bells as, combined, they account for 25% of the balance sheet's value. But let's not jump the gun here; a simple pre-sale dividend of £47,800 (leaving £27,200 on the balance sheet) would reduce this to a comfortable 19%. And even if a dividend isn't ideal (perhaps Mr H has other taxable income during the tax year in question) then the argument that the cash was being held as working capital for the business is a valid one. As the funds were held in a non-interest bearing account, could HMRC really argue that it was being held for an investment purpose?

That said, where there is any doubt as to the availability of entrepreneurs' relief it is always sensible to obtain the opinion of a relevant HMRC officer, and CG64100 ('Entrepreneurs' relief: Applications for a ruling on the status of a company'), makes it clear that the ball is firmly in the court of the individual making the disposal when it comes to obtaining certainty over trading status.

So, on the basis that Mr Hodgson's entrepreneurs' relief claim is solid, he will pay a much more palatable 10% capital gains tax on the gain from the share disposal and have the cash in his hand to live out his retirement dream. On first glance at the valuation of company assets, it looks as though £725,000 might be a

sensible offer from our German friend Mr Low, being the market value of the assets less the cash balance. But is it?

The trading loss

Mr Low may be buying a single share, but his position might not be as simple as it seems.

The trading loss brought forward of £25,000 may look appealing and could even be used in negotiations as ammunition for an increase to the offer, but it will only be available to him should he continue the business without a major change in the nature and conduct of the trade. CTA 2010, s 673(1) and s 673(2) tell us that if within any period of three years there is both:

(i) a change in ownership of the company; and
(ii) a major change in the nature or conduct of the company's trade;

then the accounting period in which the ownership changes is notionally divided into two separate periods, with any profits that may have arisen being split on a just and reasonable basis. The trading loss is then unable to be carried forward to future periods following the change in ownership under CTA2010, s 45.

> **"Where there is any doubt as to the availability of entrepreneurs' relief it is sensible to obtain the opinion of an HMRC officer,."**

Of course, Mr Low could well have every intention of continuing the same trade and for all we know he could have some canny tricks up his sleeve as to how to get the profits to a level reminiscent of the glory days Mr Hodgson last saw in the late 1990s ... but that could put losses in jeopardy too as CTA 2010, s 673(1) and s 673(3) throw a spanner in the works because if the following sequence of events takes place, in any time period:

- the scale of trading activities becomes small or negligible; followed by
- a change in the ownership of the company; followed by
- a considerable revival of the trade;

then once again, the losses are restricted as above.

HMRC's statement of practice SP10/91 gives some helpful examples of what constitutes a 'major change in the nature of the trade' though there is little to be gleaned on what constitutes a 'considerable revival'. Has there been a point pre-sale where England Ltd's trade had almost died out completely? Will Mr Low realise he should ask the question? A thorough examination of past accounts should be sufficient to determine whether these losses will disappear into the ether or not.

When looking at the goodwill, we know that Mr Hodgson has built this up over many years or, more importantly, that it was in existence before 1 April 2002 when the new intangible fixed asset rules came into play. This is a fairly significant point because, on a share purchase, the goodwill retains its original nature as a capital asset, i.e. there is no amortisation (okay, it's only 4%, but it's better than nothing) and should it be sold from the company in future, it will be taxed as a chargeable gain as opposed to a trading profit. Handy if you have a capital loss milling around at the time, but even so Mr Low may lament the £16,000 of amortisation that would have been available had this been a trade and assets purchase.

And what about losses that haven't even come into being yet? Just a twinkle in his accountant's eye, the unrealised loss on the trading premises should also be considered. Happily, as Mr Low is purchasing the share capital of the company personally, there are no fiddly pre-entry loss rules to consider here: England Ltd retains a base cost of £250,000 in respect of the trading premises, and so Mr Low is £50,000 up as a result. Does that give Mr Hodgson a little extra bargaining power?

It is worth noting at this point that, even if England Ltd was purchased by a holding company set up by Mr Low, the Finance Bill 2011 removed the restriction to capital losses unrealised at the date of sale from TCGA 1992, Sch 7A.

VAT and stamp duty

VAT registration is often a bone of contention when purchasing shares as opposed to trade and assets, with most business advisers suggesting that taking on an existing VAT registration number is akin to striking a deal with Satan. The historic VAT obligations (loosely translated as 'historic potential cock-ups by previous advisors') become the obligations of Mr Low, and with HMRC having the right to dig up the previous 20 years at will, a suitable indemnity in the sale contract would be a wise move.

And, of course, let's not forget the stamp duty due on the purchase of the shares, which can be deducted from the proceeds of a future share sale. If the consideration is the expected £725,000, that equates to a liability of £3,625 (being 0.5%) due 30 days from the date of execution. Not a terrifying amount for Mr Low, but one that should not get lost among the juicier areas of the transaction.

Scenario 2 – a holding company

In the second scenario, the sale of England Ltd is made by England Holdings Ltd (EH Ltd).

If we take the intrinsic details relating to England Ltd to be the same, the inclusion of a holding company should only affect Mr Hodgson. Mr Low is still buying a company, so aside from perhaps a little extra due diligence on the holding company (he really should check out both to see if there are any gremlins lurking), the real difference relates to how Mr Hodgson can get a hold of his cold hard cash post sale.

In this transaction, we have the joy of navigating not one, but two reliefs if we are to maximise Mr Hodgson's return.

As EH Ltd is the vendor, a gain subject to corporation tax will arise on the sale of its subsidiary company England Ltd. At this point we must consider the availability of substantial shareholdings exemption (SSE) under TCGA 1992, Sch 7AC,

which would remove EH Ltd's liability to corporation tax on the gain.

According to Sch 7AC para 8, a shareholding is substantial if the investing company:

- holds at least 10% of the ordinary share capital;
- is entitled to at least 10% of the profits on distribution; and
- is entitled to at least 10% of the assets on winding up.

So far so good. Schedule 7AC, para 18 goes on to say that the investor and invested in company must be sole trading companies or members of a trading group:

(i) from the start of the 12-month period prior to disposal, or any 12-month period in the previous two years; and
(ii) immediately after the disposal.

There is thus a problem here. Immediately after the disposal, EH Ltd will be a shell company with a rather large cash balance and no trade. So on this basis, SSE will not be available meaning Mr Hodgson will suffer a rather unappealing 'double taxation' on the gain: corporation tax at the main rate of 24% by the holding company, and the subsequent 10% capital gains tax due on distributions within three years of the liquidation of EH Ltd (more on this below).

In this scenario, it seems that the best thing for Mr Hodgson to do would be to keep hold of his shell company and use it as a pension pot, paying himself a dividend up to the basic rate band each year. Sit in front of him and say that and you may see a 'but I want my money now please!' expression begin to emerge, so consider the following possible option.

Is Mr Low particularly attached to the investment property that is held by England Ltd? If not, could it be transferred out to Mr Hodgson as a dividend in specie prior to the sale? EH Ltd would receive less in the way of proceeds, and the dividend would be taxable in Mr Hodgson's hands, but he has managed to retain an income-producing asset to supplement his retirement, and be an asset which should (we hope!) increase in value.

Finally, if all else fails, you could cheer him up by explaining that if he liquidates his holding company within three years of the sale of England Ltd, the capital payments paid out to him will qualify for entrepreneurs' relief as per TCGA 1992, s 169I(5), (6) and (7) below.

'(5) A disposal within TCGA 1992, s 169I(2)(c) is a material disposal if condition A or B is met.

'(6) Condition A is that, throughout the period of one year ending with the date of the disposal:
 (*a*) the company is the individual's personal company and is either a trading company or the holding company of a trading group; and
 (*b*) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

'(7) Condition B is that the conditions in paragraphs (*a*) and (*b*) of subsection (6) are met throughout the period of one year ending with the date on which the company:
 (*a*) ceases to be a trading company without continuing to be or becoming a member of a trading group; or
 (*b*) ceases to be a member of a trading group without continuing to be or becoming a trading company; and that date is within the period of three years ending with the date of the disposal.'

As a possible alternative, Mr Hodgson could perhaps offer up the purchase of the EH Ltd (as opposed to England Ltd) to Mr Low as this would also qualify for entrepreneurs' relief, being the sale of the holding company of a trading group.

What all this points to is that it's not usually helpful to have a holding company for the sake of having a holding company. Keeping it simple by owning the share capital of his trading company personally would leave Mr Hodgson with not just more cash in his pocket, but with his hands on the money at an earlier date too.

Just don't forget to tell him that he's given up the rather lovely 100% inheritance tax business property relief that would have been available on the shares in his personal company for the somewhat less appealing cash in a bank account. He could always reject football and go 'skiing' in his retirement instead ... not the snowy version, but the 'Spending Kids' Inheritance' alternative.

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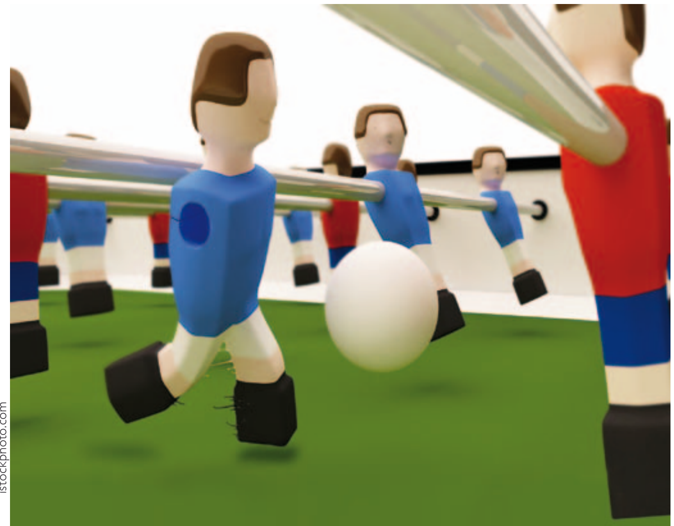
The views expressed are the author's own.

Football fantasies

A purchaser may wish to buy a company's business and assets rather than its shares. HEATHER MILLER considers the consequent tax implications.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By the time this goes to press, the glorious competition that is Euro 2012 will be well under way. As those of you who read my article 'Soccer scenarios' (*Taxation*, 7 June 2012, page 8) will already know, I am not exactly (a) enthused, or (b) knowledgeable, when it comes to the beautiful game. In fact, the subject of this article might be inducing groans from football fans across the country (well, the ones who also have an interest in tax; and who wouldn't love to see *that* Venn diagram?!) because for all I know, our prized England team might well be on the flight home already. Pessimistic? Possibly. But as I have been cajoled into joining our fantasy football competition at work I have had to scrub up a bit on my basic knowledge. I'm not going to lie, I picked my team based more on how regularly they feature in *Heat* magazine's 'Torso of the Month' than I did on their footballing prowess. Which is why it was particularly galling to learn that Frank Lampard has been ruled out with an injury; I'm now going to have to start googling the foreign players I've never heard of to see if they are suitably attractive enough to be in my team, or I'll have to go with Wayne Rooney, which obviously puts paid to my well thought out cherry-picking system.

Biggest and brightest

On the subject of cherry picking, it seems that a similar sort of approach could be taken to buying and selling a business. A buyer will always want the brightest, shiniest assets from within a company, and be far less interested in the part that is the business equivalent of a left back with a persistent knee injury. A seller will always be looking for the cleanest transaction that will make him the most money, and leave little behind in the way of loose ends. In the end, all we can hope for is that there is a deal to be done that suits both parties.

KEY POINTS

- Can a trade and assets sale benefit both parties?
- Sale of goodwill may shorten accounting period.
- Setting off trading losses against a capital gains.
- Mitigating a shareholder's double taxation.
- Do not overlook the entrepreneurs' relief requirements.

So to carry on from the 'Soccer scenarios', let's assume that this time Mr Low is less than enthused at the prospect of purchasing shares in England Ltd from Mr Hodgson and is determined to 'pick his own team' if you will. And as he already has a company with the funds available to make the purchase, even a hive down of assets into a NewCo is of no interest to him. On this basis, is there a way for a trade and assets sale to benefit both parties, or should Mr Hodgson walk away and find a new buyer to negotiate with?

This article will focus on two possible scenarios; the first involving a simpler setup that sees Mr Hodgson as the direct owner of 100% of the share capital of England Ltd, the second involving a holding company of which Mr Hodgson is the sole shareholder, that in turn owns 100% of England Ltd.

The sole company scenario

Let's start with a recap of Mr Hodgson's company ***England Ltd***, which shows a summary of the company valuation at 31 March 2012 according to the balance sheet.

Looking at the balance sheet we can note the following points.

ENGLAND LTD

Company valuation per balance sheet at 31 March 2012.

Asset	*Value £*	*Percentage of total*
Goodwill	400,000	50%
Trading premises	200,000	25%
Investment Property	125,000	15.6%
Cash	75,000	9.4%
Total	800,000	100%

- *Goodwill.* Mr Hodgson's company has built up a loyal following over the years, and as part of the due diligence in relation to the sale, this goodwill has been valued at £400,000.
- *Trading Premises.* Mr Hodgson was offered the opportunity to buy the freehold of the property from which he trades for £250,000 back in 2007, alas, when the property market was at its peak. England Ltd purchased the property and a recent valuation shows it has a market value of £200,000, thereby standing at an unrealised capital loss of £50,000.
- *Investment Property.* England Ltd also owns an investment property that it purchased for £120,000 in 2005 out of rolled-up company profits. This property has a current market value of £125,000 and it produces rental profits of £3,500 per annum.
- *Cash.* There is £75,000 in the company's non-interest bearing current account, which Mr Hodgson had earmarked to invest in Euro 2012 tournament souvenirs and memorabilia, but these have not yet been ordered.

Aside from the balance sheet, the following details are also pertinent.

- Despite England Ltd having a healthy turnover of £150,000, a trading loss of £25,000 for the year to 31 March 2012 has arisen as the result of a costly, but unsuccessful, advertising campaign.
- England Ltd has been VAT registered for many years and has a squeaky clean record with HMRC.
- Mr Hodgson set up his company 20 years ago and this sale is very much associated with his retirement, i.e. our aim here is to get the cash into his hands.
- The sale of the trade and assets of England Ltd to Mr Low is due to take place on 6 October 2012.

On the basis that Mr Low wants to purchase the goodwill and trading premises from England Ltd, rather than the shares in the company as envisaged in 'Soccer scenarios', what does all this mean for Mr Hodgson?

Goodwill

As England Ltd's goodwill has been created over a 20-year period, it falls into the pre-6 April 2002 category and as such any gain is taxed as a capital gain. As an aside, if this goodwill had been generated post 6 April 2002 it would be classed as 'new' goodwill and any gain would instead be taxed as a trading profit under the intangible fixed asset (IFA) regime. This would not have been a disaster in the case of England Ltd as the eventual tax outcome would be the same, but a point worth noting is that should the company have intended to continue by investing in a new trade and claiming rollover relief, the IFA rules relating to how much of the gain can be deferred, and in what, are quite different from traditional rollover relief.

As for Mr Low, the treatment within his company is significantly more straightforward; regardless of the origin of the goodwill, it will always be 'new' to a third-party purchaser and so the IFA rules apply, along with the option to amortise at the usual 4%.

As it stands, England Ltd will have a £400,000 gain chargeable to corporation tax in the six months to 6 October 2012.

Why six months? Because the sale of the goodwill by England Ltd marks the cessation of trade and so the end of an accounting period. Of course, not only does this advance the date on which the tax is due (now 7 August 2013, instead of the usual 1 January 2014 for a 31 March year end) it also halves the upper and lower limits that determine the rate at which corporation tax is paid. As these now become £750,000 and £150,000 respectively, the amount of gain that is taxed at the dreaded marginal rate of 25% increases by £150,000 accordingly. Not great news then, and a possible reason to persuade Mr Low to coincide his purchase with the year end of England Ltd? Far more palatable to pay at 20% after all.

"If this goodwill had been generated post 6 April 2002 it would be classed as 'new' goodwill and any gain would be taxed as a trading profit."

But all is not lost, as we must not forget the £25,000 trading loss that is lurking in the background. The guidance in HMRC's *Company Tax Manual* at CTM06300 explains the various anti-avoidance rules regarding loss buying but, in summary, this is one piece of England Ltd that Mr Low cannot cherry pick.

And with the legislation dictating that the loss must stay with England Ltd, what better use than to set it against the capital gain on the goodwill and save £6,250 (being £25,000 x 25% marginal rate) as according to CTA 2010, s 37:

'A company can claim to set off trading losses against its total profits:

- of the accounting period in which the loss was incurred; and
- if the claim requires, to carry back the losses against profits of preceding accounting periods.'

It would be rude not to.

Trading premises

It will no doubt be a disappointment to Mr Hodgson that the trading premises held within England Ltd are sitting at a £50,000 capital loss, but if he absolutely has to sell it as part of the deal, then there is at least the prospect of £12,500 of corporation tax relief (being £50,000 x 25%) to cushion the blow when the loss is offset against England Ltd's gain on the sale of the goodwill. Mr Low's company will carry a base cost of £200,000 forward in respect of the premises, and only time will tell as to whether the market recovers sufficiently for him to make a future gain. But I wonder if he knows that he'll be paying 1% SDLT as opposed to the 0.5% he would pay on a share purchase...

Post sale

So after the sale is complete, what does Mr Hodgson's personal company have to show for itself?

For one, a fairly substantial cash balance which somehow needs to make its way into his back pocket, and also an investment property that makes a small amount of rental profit. But definitely no trade, which means that under CTA 2010, s 34 he is now the proud owner of a close investment holding company. The obvious negative here is that, aside from a somewhat brief year-long concession that allows England Ltd to continue suffering tax at the lower rate of 20% after the cessation of trade, any future income and/or gains generated in the company will suffer corporation tax at the main rate. Not such good news if Mr Hodgson has designs on disposing of his investment property; it's one thing to suffer 'double taxation' – i.e. one layer within the company and a layer on the way out – but suffering it at the highest rates will add insult to definite (metatarsal?) injury.

“The guidance in HMRC's Company Tax Manual explains the various anti-avoidance rules regarding loss buying.”

Mr Hodgson should therefore consider the following possibilities to maximise his return:

- liquidating E Ltd within the year following cessation;
- keeping E Ltd and using the company as a retirement piggy bank; or
- a combination of the two.

Liquidation following cessation

Mr Hodgson could liquidate England Ltd within the year following cessation. He would do this within the year purely to avoid any income or gains being taxed at the main rate as explained above. With the gap between the lower rate and the main rate being 4% in financial year 2012, it's unlikely to be a huge difference but it's just, well, a bit annoying, isn't it? Remember, England Ltd's new year end is 5 October 2013 and as this straddles FY 2012 and FY 2013, it is important to consider the timing of the liquidation carefully.

If Mr H does intend to sell his investment property, there are two possible scenarios here:

(1) he sells prior to a liquidation and England Ltd pays the lower rate of 20% corporation tax on the gain, then distributes the proceeds after tax post-liquidation and pays 10% capital gains tax by claiming entrepreneurs' relief on this (more on this entrepreneurs' relief point below); or
(2) he liquidates E Ltd, pays 10% capital gains tax with a claim for entrepreneurs' relief, and then subsequently sells the property personally, paying a maximum 28% after the capital gains tax annual exemption of £10,600 (providing he hasn't already used this on his liquidation gains of course).

A short burst of number crunching nearer the proposed liquidation date should make it clear which is the better choice, but would it be worth suggesting that Mr Hodgson keeps hold of his property after the winding-up in any case? In these bleak times, £3,500 a year rental profit is not to be sniffed at, and he could even cross his fingers and toes for a bit of capital appreciation.

A final point to note with any liquidation is the possibility of a pre-liquidation dividend to use up that basic-rate income tax band where possible. In essence, it isn't just football that involves precision timing.

The retirement piggy bank

Mr Hodgson could keep England Ltd and use the company as a retirement piggy bank.

This option really depends on how much money Mr H thinks he needs to maintain his lifestyle. If he is happy to take a dividend up to the basic rate band each year then even with the main rate corporation tax payable on E Ltd's rental profits and the interest arising (ha ha!) on the company's cash balance, this is a neat way of drip-feeding his hard-earned business proceeds out of the company with no further liability due.

If, however, he intends to buy a vintage Ford Mustang and go on a five-year jaunt along Route 66, this probably isn't going to work for him.

A combination of the two

A combination of the above two approaches may not be a bad way of maximising the tax-free dividends and then liquidating and getting the cash into Mr H's hands. If he has the patience to wait for up to three years for the lump sum, TCGA 1992, s 169I(4) tells us that he can have his cake (tax-free dividends) and be able to eat it too (a claim for entrepreneurs' relief on post-liquidation distributions), if the liquidation takes place within three years:

> 'A disposal is a material disposal if:
> (*a*) the business is owned by the individual throughout the period of one year ending with the date on which the business ceases to be carried on; and
> (*b*) that date is within the period of three years ending with the date of the disposal.'

But I suppose we may be jumping the gun a little bit here. Are we certain that prior to the sale of goodwill and the trading premises to Mr Low (gosh, that seems like a long time ago now doesn't it?) England Ltd was a trading company for entrepreneurs' relief? For a company to even qualify for entrepreneurs' relief it must show that it does not carry out 'substantial' non-trading activities.

'Substantial' for this purpose means more than 20%, and this is measured with reference to:

- the turnover generated from non-trading activities;
- the assets on the balance sheet when compared with those relating to the trade and the value of non-trading assets measured against the total asset value which in practice would include non-balance sheet assets such as goodwill; and
- the time spent and expenses incurred in managing the non-trade activity.

In the case of England Ltd, the investment property and cash on the balance sheet could pose a problem, as they account for 25% of the balance sheet's value. That said, a simple pre-sale dividend of £47,800 (leaving £27,200 on the balance sheet) would reduce this to a more suitable 19%, for the avoidance of any doubt.

The holding company scenario

In this scenario, Mr Hodgson owns 100% of England Holdings Ltd (EH Ltd) which in turn owns 100% of England Ltd. Now, as we saw in the 'Soccer scenarios' article, a holding company can cause all kinds of complications when the transaction is a sale of shares. But in the case of a sale of trade and assets, there is really very little difference between a holding company structure and direct ownership. In any case, a sale from within England Ltd will give rise to chargeable gains liable to corporation tax, and Mr Hodgson will still have to suffer an element of 'double taxation' if he attempts to withdraw the funds by way of a lump sum.

"A short burst of number crunching nearer the proposed liquidation date should make it clear which is the better choice."

What's clear from this scenario is that the seller and the buyer will rarely come away from the transaction 100% satisfied and that, like any deal done in the transfer window, negotiation is the key.

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The views expressed are the author's own.