

Breaking up is harder to do – so make sure you take corporate tax advice before demerging.

I have written before about demergers; the act of dividing a company's business into two or more companies so that shareholders can take different parts of the business and go their separate ways.

And, until recently, I would have advised clients considering demerger that "breaking up isn't that hard to do" – as long as they seek professional taxation guidance before doing so.

However, changes to stamp duty rules introduced in Summer 2016 have made some demerger transactions a lot more difficult, and potentially much more costly.

Let's imagine that John and Jane, who each own 50 per cent of a company, want to carry on their businesses separately. By demerging, we can effectively split up the company so that John and Jane each have separate companies carrying on 'their' part of their business.

Over the past few years we have developed a number of mechanisms for demergers like John and Jane's, all of which start with getting a formal approval from HMRC. This advance clearance allows us to ensure that the demerger is pretty much free of all tax consequences, including income tax, capital gains tax, corporation tax, stamp duty and stamp duty land tax.

However, thanks to the new stamp duty measures introduced in 2016, gaining exemption from stamp duty has become more complicated in many cases. The stamp duty element of the transaction may only amount to 0.5 percent, but that equates to £5,000 for every £1 million that a business is worth, so the costs can soon mount up.

Because of the stamp duty traps sprung by the rule changes, many advisers are suggesting that John and Jane might now need to use a liquidation to achieve the demerger. But while liquidation might get around the stamp duty problem, it will also make John and Jane's demerger more complex and expensive. More advisers will be needed, adding to the cost, and it will be riskier as the extra steps mean that there is more that could potentially go wrong.

Rather than going down the liquidation route, we have developed less risky mechanisms to achieve demergers without triggering the new stamp duty charges. And, as we are still able to obtain advance clearance from HMRC for the income tax, capital gains tax and corporation tax elements, our clients have the same degree of certainty about tax treatment as they had before the rule changes came in.

The new anti-avoidance rule changes have resulted in considerable collateral damage, with commercial transactions like John and Jane's demerger now so much more difficult. And, despite the process becoming more onerous, their transaction still results in no actual loss or gain to the exchequer in terms of stamp duty.

In my view, HMRC's changes go far too far, with commercial transactions that should not have been targeted now caught in the legislation. To navigate a way through the complexity and steer clear of stamp duty charges, it is even more crucial that businesses take professional corporate advice before embarking on a break-up.

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