BUSINESS TRANSFER

Advisory Handbook 2025

ESJ

There will likely come a time when you need to transfer your business. Whether due to current financial considerations, your age, health reasons, or simply to make provisions for the future, transferring a business is not something that can be arranged overnight. It often requires years of preparation. So it's best to start early.

PHASES OF BUSINESS TRANSFER

If you are planning to transfer your business in the future, consider the following eight phases of the sales process.

PHASE 1: IDENTIFYING YOUR OBJECTIVES

Why do you want to sell your business? To whom do you intend to sell it? And what are your plans following the sale? It is important to clarify your personal and financial objectives at the outset. This will support you during the sales process.

PHASE 2: PREPARATION

During this phase, your business is analysed. Attention is paid to the market in which the business operates, its financial position, the quality of management, and the company's organisational structure. These findings are documented in an information memorandum. Seriously interested parties may be granted access to this memorandum at a later stage.

PHASE 3: MAKING THE BUSINESS SALE-READY

A business being offered for sale must be in good condition. You should be able to present reliable annual financial statements for approximately five consecutive years. These must accurately reflect the business's profitability. A clean balance sheet is also essential.

There may be assets on the balance sheet that are also used for personal purposes. In such cases, you must decide whether to acquire them personally. A fair market value will need to be calculated, which could result in a book profit or book loss. Personal debts to the private limited company (bv) should ideally be repaid. Additionally, the equity-to-debt ratio should conform to the norms within your sector.

It is also vital to ensure that the legal and fiscal structure of the business is as robust as possible. For instance, it may be advisable to place real estate in a separate entity or to establish a holding structure with one or more operating companies. Restructuring the company can sometimes result in significant tax benefits. Timing is critical, as legal deadlines spanning several years may apply, and retroactive adjustments are often limited.

PHASE 4: VALUATION

Relatively early in the transfer process, the business's value is determined. There are various methods for this: from liquidation value to discounted cash flow, and from intrinsic value to goodwill. Regardless of the method used, determining an exact value is unrealistic—it will always fall within a range. Alongside the figures, qualitative factors such as market outlook and growth potential also play a significant role. One certainty remains: the value lies in future earnings, not in past performance. Keep this in mind, particularly if your results were impacted by the coronavirus crisis.

PHASE 5: DETERMINING THE SALE PRICE

Once your business is fully prepared for sale and has been valued, it is time to determine the sale price. Consider the following:

- What is the minimum amount I am willing to accept for my business?
- What is the maximum amount I might realistically achieve?
- What would constitute a reasonable sale price?

Having a clear understanding of your pricing expectations will strengthen your negotiating position with prospective buyers.

Note!
If you intend to transfer your business within the family, you may be inclined to accept a lower price. However, if the sale price does not reflect market value, the Dutch Tax and Customs Administration may classify it as a gift, which would, in principle, be subject to gift tax.

PHASE 6: FINDING A SUITABLE BUYER

At this point, you begin searching for a potential buyer. This might be an external party, a family member such as a son or daughter, an employee, or someone within your business network.

If no suitable candidate has yet been identified, you may take the business to market. A third party may also assist in the process.

Several online platforms offer search options. Before going to market, it is advisable to prepare a short company profile to attract interest from potential buyers.

PHASE 7: NEGOTIATION PHASE

Once a potential buyer has been identified, the negotiation process begins. It is essential that all actions are documented in writing. When it becomes clear that the prospective buyer is seriously interested, it is time to exchange key information.

A confidentiality agreement ensures that this information is handled responsibly. If both parties have confidence in a successful outcome, it is common practice to record their mutual intentions in a letter of intent.

Following the letter of intent, the prospective buyer will want to verify the information you have provided. This is done through due diligence, typically a thorough review of the business covering legal, tax, financial, and economic aspects.

Once the main points have been agreed upon during negotiations, a preliminary agreement may be concluded.

PHASE 8: SALE

After completing the negotiation phase, the final sale agreement can be signed. If a private limited company (bv) is being sold, this will require a visit to the notary, where the share transfer is formally executed. Upon receipt of the purchase price, the business is officially sold.

Although the transfer is now finalised, this does not necessarily mean all ties with the business are severed. You may remain involved in the business to some extent. It is also possible that arrangements were made regarding the purchase price, where the final amount depends partly on the business's future performance.

TAX CONSEQUENCES

A business transfer will inevitably involve dealings with the tax authorities. Whether the transfer concerns a sole proprietorship or a private limited company will affect the tax treatment. In many cases, settlement is required—though not always. Several tax relief arrangements are available. The most relevant are summarised below:

- Income Tax includes a deferral facility for the transfer of a sole proprietorship or a share in a general partnership. If the conditions are met, there is no immediate settlement with the tax authorities, and the obligations are transferred to the buyer.
- One of the conditions is that the transfer must be to a co-entrepreneur who has earned profits from your business for at least 36 months or has worked as an employee in your business for at least 36 months. To take advantage of this, it is important to plan well in advance.
- The deferral facility is not always the most beneficial option. It is advisable for both you and the buyer to calculate in advance which option is most advantageous.
- The contribution of a business into a private limited company in exchange for shares can be carried out without immediate tax consequences.
- For directors and major shareholders, there is a deferral facility available, such as in the case of a share merger or legal demerger.
- Corporate Income Tax also includes several deferral arrangements, including the business merger facility.
- Under Income Tax, there is also a deferral option for the donation of substantial interest shares. The same applies to the inheritance of such shares.
- The Inheritance Tax Act provides for the business succession scheme (BOR). The acquisition of business assets or shares in a private limited company may be conditionally exempt from inheritance or gift tax up to 100% for business value up to €1,500,000 (as of 2025). For value exceeding this threshold, a conditional exemption of 75% applies.

AMENDMENTS TO THE INCOME TAX DEFERRAL SCHEME (DSR) AND BUSINESS SUCCESSION SCHEME (BOR)

The government has amended several aspects of the Income Tax deferral facility and the business succession scheme under the Inheritance Tax Act, with further changes scheduled for 2026. Given the complexity and the fact that many of these proposed changes are not yet final, we recommend consulting the Advisory Handbook on Business Transfers for Family Businesses. This handbook offers detailed explanations of both the BOR and the DSR.

IN CONCLUSION

The purchase and sale of a business is a highly complex matter. It involves economic, legal, tax, financial, and social considerations. For individual advice, please contact us.

CONTACT

E-mail: info@esj.nl
Phone: +31 (0)88 0 320 600