

Additional Payment Caught for CGT

When a company is being taken over, there are many ways to structure the transaction. A recent case shows how important it can be to make sure that such transactions are correctly structured for tax purposes.

It involved a company director, who sold his shares for cash to the buyer of the company. In addition to the money for the shares, the purchase agreement provided that the company would make a further payment as directed by him. The further payment was made to a third party, who paid it into a pension scheme for the director.

Although the facts were complex, the issue revolved around whether or not the payment into the pension scheme was part of the consideration for his shares for Capital Gains Tax (CGT) purposes. HM Revenue and Customs (HMRC) argued that it was, whilst the director argued that it was not.

In court, HMRC's argument prevailed.

Says John Burrowes "Had the payment into the pension scheme been made before the agreement was made for the sale of the shares, it would not have constituted consideration for the shares for CGT purposes. Company share sale agreements are often complex and there are many potential pitfalls. We can advise on all aspects of company purchases and sales."

*For more information contact PCB Solicitors on 01743 248148
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