

Workshop 2 – Transmission & Take Overs of SMEs

Friday 8th September 2006

11:00 to 12:30

Facilitator:

***Albert Folia, President of the Catalonian Institute,
Deputy President of AMA***

FEE Annual European SME/SMP Congress, Palais des Congrès, Versailles, France, 7th & 8th September 2006

Workshop 2 – Transmission & Take Overs of SMEs

Friday 8th September 2006

Speakers:

***Christian Weinberger, Head of Unit Entrepreneurship, DG Enterprise, European
Commission***

Jens Poll, German representative, FEE SME/SMP Working Party & IFAC SMP Committee

Chas Roy-Chowdhury, UK representative, FEE Direct & Indirect Tax Working Parties

***Patrick van der Ven, Project Manager, Transmission & Takeover, Dutch Chamber of
Commerce, Netherlands***

Ivan Bosela, President of the Slovak Chamber of Auditors (SKAU)

Hannu Koskinen, President of KHT- yhdistys, Authorised Public Accountants, Finland

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Commission Communication (March 2006):

**Transfer of businesses –
Continuity through a new beginning**

Congress FEE
Versailles 7 & 8 September 2006

Christian Weinberger
Head of unit “Entrepreneurship”, DG ENTR

**Business Transfers -
The European dimension**

- 1/3 of all enterprises in the EU will have to transfer ownership in the next 10 years
- Up to 690 000 enterprises each year
- 2.8 million jobs at stake every year

Commission Recommendation 1994

1. Awareness for the need of timely preparation
2. Conducive financial environment
3. Allow simple restructuring to prepare transfer
4. Simplify rules for small PLCs
5. Ensure continuity of partnerships
6. Inheritance and gift taxes must not endanger business
7. Special tax rules for retirement, reinvestment, sale to third parties

Implementation to date

EU 25: Degree of implementation 55%

- Old Member States: 60%,
- New Member States: 45%

Main areas of implementation:

- Restructuring/Change of legal form,
- Simplifications for small PLCs,
- Legal principle of continuity,
- Inheritance tax

Implementation - Overview

Country	Auditors	Finance	Legal firms	Restructuring	SMEs/HCKs	HCK software member	Legal continuity	Unanimity not required	Reduced inheritance tax	Deferring inheritance tax	Retention tax relief	Re-investment relief	Sale to employees	Total (+ or -)
B	+	+	+	+	+	+	+	+	+	+	+	+	+	11
CZ	-	+	+	+	+	+	+	+	+	+	+	+	+	9
DK	-	+	+	+	+	+	+	+	+	+	+	+	+	9
D	+	+	+	+	+	+	+	+	+	+	+	+	+	11
EE	+	+	+	+	+	+	+	+	+	+	+	+	+	4
EL	-	-	-	-	-	-	-	-	-	-	-	-	-	2
E	+	+	+	+	+	+	+	+	+	+	+	+	+	9
F	+	+	+	+	+	+	+	+	+	+	+	+	+	9
IRL	+	+	+	+	+	+	+	+	+	+	+	+	+	9
I	+	+	+	+	+	+	+	+	+	+	+	+	+	9
CY	+	+	+	+	+	+	+	+	+	+	+	+	+	8
LV	-	+	+	+	+	+	+	+	+	+	+	+	+	5
LT	+	+	+	+	+	+	+	+	+	+	+	+	+	8
L	+	+	+	+	+	+	+	+	+	+	+	+	+	7
HU	+	+	+	+	+	+	+	+	+	+	+	+	+	8
MT	+	+	+	+	+	+	+	+	+	+	+	+	+	8
NL	+	+	+	+	+	+	+	+	+	+	+	+	+	8
A	+	+	+	+	+	+	+	+	+	+	+	+	+	8
PL	+	+	+	+	+	+	+	+	+	+	+	+	+	12
P	+	+	+	+	+	+	+	+	+	+	+	+	+	6
SI	+	+	+	+	+	+	+	+	+	+	+	+	+	3
SK	+	+	+	+	+	+	+	+	+	+	+	+	+	3
FIN	+	+	+	+	+	+	+	+	+	+	+	+	+	9
S	+	+	+	+	+	+	+	+	+	+	+	+	+	6
UK	+	+	+	+	+	+	+	+	+	+	+	+	+	7
EU 25	15	10	23	16	14	19	19	4	21	18	8	6	8	181

Conclusions (1)

More needs to be done to support the timely preparation of transfers.

Good examples: In Austria and the Netherlands Chambers of Commerce and Trade raise the issue directly with older business owners in personal mails.

Accountants and tax advisers could address the issue with older clients.

Conclusions (2)

Transfers to 3rd parties gain importance.

Good examples: In Germany, France, Italy, Luxembourg, the Netherlands and Austria Chambers of Commerce organisations organise transfer bourses.

Accountants and tax advisers can support negotiations between transferors and transferees by providing objective methods to calculate the value of a business and work out efficient payment arrangements.

Conclusions (3)

Transfers require more finance than start-ups.

Good examples: Interest reduced loans in Belgium and Luxembourg, loan guarantees in Denmark, France and Austria, tax relief in Ireland.

Conclusions (4)

Most business people transfer only one business and have no possibility to gain experience.

Good example: Italy has started a broad initiative to ensure that support reaches the numerous SMEs in all areas.

External expertise, e.g. from accountants and tax advisers is essential for a successful transfer.

Conclusions (5)

Inheritance taxes have to be transfer friendly.

Good examples: Abolished inheritance taxes in some countries, special tax treatment for business transfers in most other countries.

Accountants and tax advisers have to work out tax-efficient transfer arrangements.

Conclusions (6)

Taxes on business transfers to third parties have to be transfer friendly.

Good examples: Reduction of progressive effects of income taxation, tax exemptions, reduction of rates.

Accountants and tax advisers have to work out tax-efficient transfer arrangements.

SME business transfers in the Netherlands: the accountant



Versailles, 8th September 2006
Patrick van der Ven



KAMER VAN KOOPHANDEL

Content

- > Successful business transfers: a European challenge
- > Successful business transfers: the Dutch challenge
- > Successful business transfers: a matter of good advice...
- > Successful business transfers: the accountant
- > Successful business transfers: accountant vs business administrator
- > Successful business transfers: working together in the Netherlands



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The European challenge 2002

- > Expected SME business transfers 610.000
- > Bottlenecks for continuity
 - *Emotion*
 - *Complexity*
 - *Tax and legal issues (national law)*
 - *Finance*



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Successful business transfers: the Dutch challenge (1)

- > Expected relative increase supply side due to retirement babyboomers
- > 2005 -2010 > 100.000 – 120.000



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Successful business transfers: the Dutch challenge (2)

Ministry of Economic Affairs, Employer Branches, Chamber of Commerce

SUPPLY Side

- > Create awareness of necessity "in time" preparation
- > Inform entrepreneur about process and possible bottlenecks

DEMAND Side

- > Create awareness about the possibility and benefits of starting a business by taking over one



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Successful business transfers: the Dutch challenge (3)

Plan: In action for entrepreneurs (Min. Economic affairs)

Plan: From Impulse to Impact (Chamber of Commerce)

> 2004 Development Free Toolkit Business Transfer

- Mailing 113.000 entrepreneurs 50+
- 2005, 2006 Response 30% ordering

> May 2006 Event SME Business Transfer (Chambers of Commerce)

- *Regional Lunch event advisors*
- *Regional Information event for entrepreneur*
- *Regional advisory program for entrepreneur*



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Successful business transfers: a matter of good advice?

- > 500 participating advisors/consultants
- > 70 regional round table discussions
- > About 5 thesis concerning business transfers
- > Connected by a computer network
- > Results directly presented to a central panel consisting of representatives of advisors, the entrepreneurs and government



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Successful business transfers: the accountant, a matter of good trust and of responsibility

- > Discussion results aimed at accountant:
 - Are entrepreneurs trusted party
 - Co-responsible for successful business transfer
- 1. Creating awareness on time preparation and bottlenecks
- 2. Supply of tailored information:
 - By Accountant himself
 - By referring to an Independent information desk (Chamber of Commerce)
 - By referring to a specialist



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Successful business transfers: business administrator versus accountant

- > Both trustee, both responsible for awareness
- > Both responsible for information & advice, dependent on the case as a signpost to other parties that give information or advice
- > All specialists together: work on transparency in the market:
 - Supply & demand
 - Low entry cost for SME
 - Government subsidization
 - Transparency in prices
 - Certified services
 - Transparency in knowledge and experience



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Dutch Chamber of Commerce vs. Accountant & business administrator

- > Creating a network where all parties can benefit from ...
 - Depending on the situation: be one another's signpost
 - Work together in developing low barrier and low cost products
 - development of a test in the Netherlands: to what extent your company is ready for the market ...
 - Consulting hours



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Transmission and Take Over of SMEs

How to Structure a Transfer?
What are the SME-Implications?

by Dr. Jens Poll
Berlin, Germany

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Important Questions

What are the main issues?
What is due diligence?
What is the value of my business?
How to find a buyer?
Which are important issues for the negotiations
and the contract?

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How to Structure a Transfer?

Different reasons for selling or transferring the business.

It is necessary to plan and structure the process.

Several questions arise:

- Which are my aims and most important issues? (e.g. price or transferring to a next generation)
- Who should I contact for consulting/support (accountants, lawyers etc.)?
- When is the right time to transfer?
- Which tax implications could arise?

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How to Structure a Transfer?

The details of the structure of a due process depending on business and size.

How to prepare:

- Short description of business (sector, size, etc.)
- Legal background
- Collecting all relevant data
- Preparing an exposé/info-memo
- In some cases: preparing a data room (perhaps contracting for a vendor due diligence)

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How to Structure a Transfer?

What is a due diligence?

- Financial
- Tax
- Legal
- Others

The purpose is that the interested parties are getting sufficient information to make a binding offer

The problem: Giving secret information to third parties, therefore the need of confidentiality (different kinds of legal declaration with punitive elements)

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How to Structure a Transfer?

How to determine a selling price?

- Different methods of valuation of a business
 - E.g. DCF – Discounted cash flows
 - But for SMEs it is often difficult to provide the information needed (e.g. how to plan future cash flows?)
 - Simplifications: Concentrating on the last year(s) and perhaps the current year
 - Using practical methods which are used in different sectors (multiples of EBIT, EBITDA etc.)
- Depending of the transaction volume it could be useful to make a valuation before starting the process
- Who can make a valuation?

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How to Structure a Transfer?

How to find a buyer?

- Public market places/platforms
- Professional advisers
- Public/structured offer/tender
- Personal references/preferences
- Management buy out

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How to Structure a Transfer?

Important issues which has to be addressed:

- Not only the price is relevant, also the terms of the contract (e.g. guaranties, warranties, period of limitation)
- Danger of conflicts during and after the transfer
- Reliability of the contractual partner (e.g. securities for getting the money)
- It is dangerous for the seller to guaranty future earnings, profits etc.

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How to Structure a Transfer?

- Often it is necessary that the seller remains for some time in the business to ensure the transfer of know how, clients, customers etc.
- Earn out-models
- Timing

Take the time which is necessary to make a serious deal!



Tax and
Succession
Planning

By Chas Roy-
Chowdhury

**“Tax kills
businesses.”**

Succession Planning

Scope of the presentation

- General comment on succession planning
- Which types of businesses do plan and why
- Look at general European landscape for tax and business asset transfers
- UK tax rules as a case study

The Succession Plan

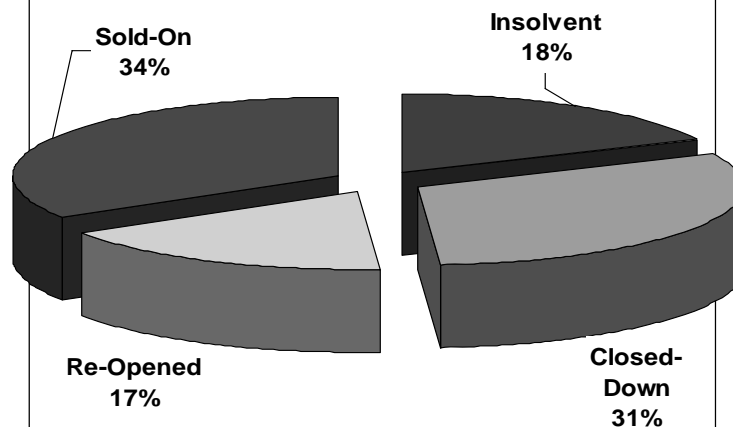
■ EU estimates over next decade (from 2004):

- 610,000 SMEs will transfer ownership
- Of which, 300,000 SMEs with employees and 310,000 one-person businesses
- Involves transfer of 2.4m jobs

■ Business succession will be on the rise:

- Ageing of business owners (in line with an ageing population)
- Increase in business formation in 1970s and 1980s: these business owners will be in their 60s
- Maturity of the businesses and product life cycle

The Succession Plan What Happens To The Business



The Succession Plan

Having an actual succession plan pivotal

- otherwise nothing happens
- business may die with owner

Non-tax considerations critical

- accountants should provide a one stop shop and depth of experience

ACCA research study published 2005

- in-depth interviews with accountants
- they had inside knowledge of business
- they could also advise from a technical perspective

Succession Planning

ACCA report shows state of mind of proprietor determines whether business continues.

- Is the business the individual
- or a business

Where individual then life style based. Hobby, extension of self and no succession planned or likely

Where business is "a business" then succession planning likely.

The Succession Planning

The business without a succession plan is one waiting to fail

Many of the intricacies the process already considered

Important to realise the plan does not just happen requires pro activity from entrepreneur

May mean thinking the unthinkable and bringing in an outsider to run the business

The Succession Planning Tax

Survey of tax regimes in Europe by FEE 5 years ago:

Most countries required some tax to be paid for transfer of business

UK was only one with little or no tax payable on transfers

Rates of tax varies from 0% to over 50% 5 years ago

Present position in Europe is somewhat different

Most countries have now adopted UK style tax law especially for SMEs

The Succession Plan

Sale Country	a) of a business	Y ^d	Z ^d	b) of interest in a partnership	Y ^d	Z ^d	c) of shares in a limited liability company/ corporation	Y ^d	Z ^d
Austria	24,9%*	X		24,9%	X		24,9%**		X
Belgium	18%*/ 36%**	X		18%/36%		X	18%***		X
Denmark	53,8%*/59,8%**	X		53,8%*/59,8%**	X		29,3%/39,3%***		X
Finland	28-59%*	X		28%		X	28%		X
France	56,5%/ 38,6% *	X		56,26%/20,9% **	X		20,9% ***		X
Germany	51%*	X		51%*	X		51%*		X
Greece	20%	X		20%	X		-		X
Ireland	40%		X	40%		X	27%, 40%		X
Italy	45,5%/18,5% *	X		27%/12,5% **		X	27%/12,5% **		X
Luxembourg	23,419%	X		23,419%	X		22,796%		X
Netherlands	44,68% *	X		44,68% *	X		25%		X
Portugal	40%		X	10%		X	10%		X
Spain	20%	X		20%	X		20%		
Sweden	56%	X		30% *		X	30-56% **		X
UK	0*		X	0*		X	0*		X

Succession Planning

Taking tax examples from the UK

No tax for the following:

- i) A sole trader business or share of a partnership
- ii) Any unquoted securities or such securities together with assets which give control of a business

The UK relief for these assets are known as Business Property Relief (BPR)

Succession Planning

The relief is designed to help and safeguard the ongoing viability of small businesses and partnerships

No capital gains payable

No VAT

No Inheritance Tax – this is the main death tax

The 100% relief is available whether the transfer is to a complete stranger or ones own children.

Some EU states restrict relief to only children – does not help succession planning.

Succession Planning

Agricultural Property Relief (APR)

Separate yet similar reliefs available for agricultural property

Includes farm land and buildings

Relief 100% available for transfers to children or others who totally unrelated

Any part of estate on which APR not available BPR is.

Hence APR/BPR interaction where necessary to produce 100% relief

Succession Planning

SMEs must have certainty and clarity on tax costs

The overall problem of any tax costs in some countries is

anti-SME

anti-Employment

anti-Lisbon Agenda

The Succession Plan

Point 3

Point 4

Point 5

Point 6



Thank you

SME transmission to a new generation

Hannu T. Koskinen
President of the Finnish Institute of
Authorised Accountants

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SME transmission to a new generation

- Alternatives in strategy
- Preparing SME for transfer – views to be considered
- Corporate Governance in a Transfer

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Alternatives in strategy

- Change from a single entrepreneurship into wider owning structure
- Grow business vs. buy outs
- Using exit partly – new capital investor as a minor shareholder:
advantages/disadvantages
- Rapid change vs. long-term strategy

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Preparing SME for Transmission – views to be considered

- Develop a family transmission plan
- Joint view of inheritors
– retain, invest, disinvest
- Valuation of enterprise
– market value vs. tax implications
- Role of management in future
– family management vs. outside professional
- Transfer of operational experience

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Corporate Governance in Transmission

- Communication between shareholders and management
- Equal treatment of shareholders, proper contractual agreements
- Develop Corporate Governance for SME

Slovak conditions and treatments of takeovers of SMEs: accounting and tax consequences

Ivan Bošela
President
Slovak Chamber of Auditors

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SME's in Europe – definition (EC recommendation No.96/280/EC)

Criteria	Micro	Small	Medium
Employees	<10	<50	<250
Turnover	-	<7 mil.Eur	<40 mil.Eur
Assets	-	<5 mil.Eur	<27 mil.Eur
Independence	-	<25% share of non SMEs	<25% share of non SMEs

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2005: SME's in Europe and Slovakia – number of enterprises

- EU - estimate: 20 mil.
- Slovakia: 84 thousand

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2005: SME's in Europe and Slovakia – employment share

- EU: 66%
- Slovakia: 71%
 - Sole proprietorships: 31%
 - Other SMEs: 40 %

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2005: SME's in Slovakia – production, value added, profit

- Production: 42%
- Value added: 49%
- Profit: 46%

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SME - accounting

- turnover (mil.Eur) < 0; 0,1 > :
- cash based bookkeeping
- turnover (mil.Eur) < 0,1; 100 > :
- double entry bookkeeping (national-no IAS/IFRS)
- turnover (mil.Eur) < 100 and other criteria
=> non SME's:
- double entry bookkeeping (IAS/IFRS mandatory)

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Transfer of businesses – accounting and tax consequences

- **natural persons** (sole proprietorships or partnerships – not listed in Trade Register, mostly cash based bookkeeping):

A. Transferor:

1. To close the accounting books (tax evidence)
2. To calculate income tax as of the day of transfer of business (exempted from income tax the sum up to 5 times of life minimum)

B. Transferee:

1. To open the accounting books
2. No inheritance tax - abolished in 2004

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Transfer of businesses – accounting and tax consequences

- **legal persons** (listed in Trade Register, double entry bookkeeping):

I. Transfer of business by the sale of the shares (interest) (business entity doesn't close accounting books):

A. Transferor:

1. Income tax calculation (natural persons as holders of shares exempted from income tax up to 5 times of life minimum)

B. Transferee:

1. No inheritance tax - abolished in 2004

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Transfer of businesses – accounting and tax consequences

- **legal persons** (listed in Trade Register, double entry bookkeeping):

II. Transfer of business by the sale of the enterprise (merger, etc. – comparable with IAS/IFRS principles - business entity is closing its accounting books):

A. Transferor:

1. Income tax calculation (natural persons as owners of the enterprise
exempted from income tax up to 5 times of life minimum)

B. Transferee:

1. Revaluation of received assets, liabilities and contingent liabilities to
fair value, no income tax from revaluation
2. Goodwill and deferred tax calculation

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Transfer of businesses – other simplifications in Slovakia

1. Easy conversion of a sole proprietorship or partnership
into a limited liability company - small minimum capital
requirements (5 000 Eur)
2. No need for a supervisory board in limited liability companies
3. Minimum formalities regarding calling meetings and requirements
regarding accounts, audits and reporting (companies without
generally traded shares)
4. Possibility to establish a small business as a limited company or
even as a plc with only one member
5. Flat tax (general income tax, VAT)
6. No inheritance and gift tax

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Successful business transfer of SMEs – conclusion

- Continual reform of laws and regulation by

implementing transfer-friendly accounting and tax systems!!!

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More info...

www.skau.sk

www.finance.gov.sk

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