Video Transcript

Business Ownership Transition Webinar Series - Pre-sale planning

Andra Ilie:

Good morning everyone, and thank you very much for joining our second webinar of the Beyond Business Ownership series on the topic of pre-sale planning. My name is Andra Ilie and I'm a Senior Advisor on Family Office, Governance and Philanthropy at HSBC Private Bank. As a very quick reminder, the first webinar in the series focused on preparing yourself and your business for exit. And if you did miss it, and would like a copy of the recording, please do contact your Relationship Manager.

Now, pre-sale planning is a very important step when considering a sale because ultimately it can increase the price you achieve, it can save time and cost when the sale process commences, and also help you avoid the risk of a failed sale. Now, over the next 75 minutes or so, we will be taking a look at the steps you can take to build a clear business exit strategy, alongside tips and tricks for getting it right, as well as pitfalls to avoid.

I'm absolutely delighted to be joined today by a very experienced panel. I've got with me Nicola Roberts, who is a partner at Deloitte Private. I've got Beatrice Puoti, who is a partner at Stephenson Harwood. I also have Jeremy Franks, who is the Head of Wealth Planning and Advisory here at HSBC, as well as my colleague Paul Bradshaw, who is a Managing Director in our UK wealth planning team here at HSBC. Thank you very much to everybody for joining me today.

And just before we get started, I would like to make just two things clear. Firstly, HSBC UK Bank and our panelists have no responsibility for, and are not providing, legal or tax advice in this webinar. And therefore, any views expressed or information provided does not constitute legal or tax advice and should not be relied upon as such. And finally, for our audience this morning, I'm sure you'll have lots of questions that come out of the discussion. If you'd like to ask our panelists any of them, please do make sure you use the box at the bottom of your screen, and we will come to them at the end.

Right, now, health warning over. And turning to today's topic, we often hear that it's never too early to start preparing your business for a sale. And we also hear that very simple aspects such as getting your files and commercial contracts in order, assembling a team of advisers, and conducting a high-level legal and accounting audit, can have a significant impact on the smoothness of the transaction, as well as the impression you make on the buyer.

So, what I'd like to do is, I'd like to start our conversation today by asking our experts for their thoughts on the stage at which business owners think about pre-sale planning and what are some of the major issues they see coming up in conversation. So, I'd like to start with Jeremy, if I may? So, Jeremy, in your experience, what are perhaps three or four key things to consider from a business owner's perspective when contemplating a sale?

Jeremy Franks:

Morning Andra, and a great question to start. I think first of all, I would always suggest to business owners who are considering a sale or an exit to take a step back. What are you trying to achieve? Is it the financial security of your family? Are you trying to maximise post-tax proceeds consideration? Are you trying to create a legacy? Are you intending to look after the management team?

So, I think first of all, take a step back and be very clear around your objectives. What are you trying to achieve? I think second of all, I'd mention explore and understand fully your options. What do I mean by that? Often, when we talk to clients, they think, "Right. Okay, I need to sell my business perhaps to private equity," but there's many other options. It may be a trade sale, there may be a management buyout. So, take a step back, explore your options and understand and appreciate all your options before you press the trigger on any.

Thirdly, take a moment to consider how you might structure consideration. Are you looking for cash? Would loan notes potentially make sense? Perhaps if it's a purchasing company, would you be comfortable taking shares in that purchasing company? All relevant consideration. And I think what I would also say is, understand where the intrinsic value of your business lies. What do I mean by that? I've undergone a number of processes in the last few years where the vendor hasn't appreciated the true value and has underestimated the true value of their business.

For example, a business which was a widget business but also had significant data and that data was actually more valuable than the shareholders had initially appreciated. So, really understand your business and where the true value lies. And finally, I'll just simply say, be careful around how you approach the process. We'll go into that in more detail a little bit later on, I'm sure.

Andra Ilie:

Great, thank you very much. I particularly like that purpose piece because that is something we discussed in our previous webinar quite a lot and it's really, really important. So, perhaps Nicola, if I can come to you now and then maybe Bea. What are your views, Nicola, on this? What are some of the critical aspects that, perhaps if you miss, can have an actual detrimental impact on the transaction?

Nicola Roberts:

So, thanks, Andra. I think there's a couple of things actually. And I think the first thing is to be really clear, picking up on what Jeremy said, what your divestment strategy is. So, what are you selling? How are you going to sell it and to whom? Have you worked out all your options in terms of a possible purchase? Is it going to be an IPO? Is it going to go private equity? Is it going to be a full trade sale? Are you going to remain in the business afterwards or are you going to do a full exit?

And some of this stuff, I think, evolves over time as well. So, I had a case last year actually where someone wanted to exit their business, sell to PE, but they wanted to stay in. But actually, the amount they wanted to retain was just not tenable. It was an amazing business, absolutely someone would want to buy it, but they wanted to keep too much because they weren't really ready to sell it. And so, in the end, it's fallen over. It'll come back again. The good thing is though they've done loads of prep and they've got a much clearer strategy now.

And I think having that compelling exit strategy and equity story about where the value is, what is your proposition, what you're selling, because a lot of this is about making sure we don't have value erosion over the sale process. You'll start off with a figure and these things can come back and erode the value.

And so, all of that then links into just being really prepared, as you'd expect a tax adviser to say. Have a single source of truth and a really robust set of data and business controls. And on the tax side, that means on the due diligence, knowing you've got all your PAYE records up to date. Is your VAT records up to date, corporate tax, historic share transaction? Have you got any outstanding HMRC enquiries? We'll come onto some of the other things like do you need to restructure, de-merge, simplify it before a transaction? But it's getting that really clear data room on all your due diligence set up, once you've worked out exactly what your kind of equity story is.

Andra Ilie:

Great. So, some really great points there. And Bea, how about you? Do you also think that preparation is key? I know we've had lots of conversations on this before.

Beatrice Puoti:

I have a few businessmen who I picked up from the very beginning, and that is one of my favourite things. And I always say you should set up your business from the beginning thinking of when you're going to sell. And have all of this, because if you do set it up properly, and you have all of the things that Jeremy and Nicola were saying in place, there are four things I think that people need to... it's quite simple. You need to know it throughout your business and on sale that you have the right shareholders in your business and for the sale. And meaning, if there are minor shareholders, you need to deal with that. That your assets are right and owned properly. And people always forget about intellectual property, trademarks, rights over your website, which are commercially fundamental, but people don't think about that very often. So, registering as you go along, and taking ownership of the assets as you go along.

The third one is to make sure that the employees are set up properly and you have the right incentives. You have your management is brought into whatever it is that you do and the communication is right, and they have the right position in the company to help you. And simply the paperwork which is, in my experience with no insult to anyone, but businessmen are so concentrated in doing what they do best, which is business, that they find paperwork really boring. But when it comes to a sale, as Nicola said, having the ability to demonstrate having financial records, financial accounting, all this information and all of the HMRC stuff at your fingertips, is absolutely fundamental.

Andra Ilie:

Thank you very much, Bea. I know we're going to touch upon the management incentives and the management teams later, but that's a really great point. And Paul, if I can come to you finally on that perhaps for just a few quick thoughts. Given you focus very much on UK resident, non-UK domiciled clients, is there anything in particular from your perspective that you wanted to add on this?

Paul Bradshaw:

Thanks Andra and good morning everyone. I suppose a couple of headline points. One, it's not just about the tax, I suppose, and remember the foreign aspects. So, given that we look after a very large number of clients who aren't originally from the UK, when they're going through that process of deciding they are going to be selling a business, then making sure that we don't ignore foreign aspects of the eventual, if you like, timeline. Clients wanting to exit a business, and that would often be the genesis of them looking to either leave the UK to return home, or to move to a foreign jurisdiction, a third jurisdiction. So, making sure that we bring in external foreign advisers early into the transaction is something that we like to see quite often.

Andra Ilie:

Thank you very much for the beautiful intro to my next area of questions, which was very much around the team of advisers. So, when it comes to assembling it, I always have an example that comes to mind. One of the clients I used to work with said to me that, "As advisers, we take for granted the fact that we know who does what in terms of helping the client” but our clients don't, right? business owners don't, and to Bea's point, they're so focused on what they do. So, I guess my next question, it's very much around when it comes to that team of advisers that can help with the pre-sale process, how does it work, puzzling it all together? Who does what? And at what stage should each adviser become involved?

Jeremy, can I turn to you first please on this? How does HSBC help clients? And how do you work with other professionals such as the ones that we have on this panel today?

Jeremy Franks:

What we try and do is hold the client's hand through the process because it is a stressful process, and what we try and do is minimise the stress involved in the process. So, to that end, and certainly from a wealth planning and advisory perspective, we have a number of pillars, disciplines, from financial planning to wealth structuring, family governance, philanthropy, advisory and family office advisory. So, quite a broad skillset. We don't give tax and legal advice but we have a lot of experience and expertise to bring to the table and what we try and do is help the client coordinate the advice that they need. So, trying to make sure that they get the advice from lawyers and accountants and tax advisers, like Beatrice and Nicola, in a timely manner, but most importantly that they're addressing the issues that they need to address when they need to address them.

And I think a theme, which undoubtedly will come out of today, that planning in advance is critically important in that context. What I would say as well is that I've often seen situations over the last 20, 25 years whereby an entrepreneur has been very loyal to their lawyer, their accountant, their tax adviser, but realistically and objectively they've probably outgrown their capabilities and that they need a new adviser for this process for aspects. So, what we try and do is handle that sensitive issue very diplomatically and sensitively. We will suggest that... well actually, the loyal adviser who knows the client really well and knows the business and knows the, let's say, family dynamics and the relationship between the family and the family business, he or she should be involved in that process, but a new adviser come in for aspects where they're not best positioned, so, what we try and do is make sure that our clients get the best possible advice at the right time and that we build a team around the client that works effectively together, has the right technical and commercial experience but works seamlessly so as to minimise the stress on the client, but also to make sure that nothing's missed, particularly in a stressful process like an exit.

Andra Ilie:

Great, thank you very much, Jeremy. And building on that, Paul, a more granular wealth and financial planning perspective perhaps, at what stage do you get involved? And again, what are some of the areas you can help with?

Paul Bradshaw:

So, as clients are going through the process of an exit, I think there's a few headline points that we need to consider. The liquidity event is going to change the client's financial profile, understand what the post-event asset base will look like and so I suppose, leaning back on what Jeremy said a moment ago and it's so true, making sure you've got the right team of advisers in place for the transaction is key. And in-team, we'll typically look at a number of things for our clients as they move away from being families that manage a business to almost being families that will transition to managing wealth. And as Jeremy mentioned, we've got various pillars within the team on the financial planning side, and we work very closely with our financial planning colleagues. We'll look to see what a client's asset base will look like post-exit, test what that will do from a cash flow perspective so, as they've gone from drawing income from the business, that business arguably will cease to exist, at least in their ownership, and in replace of that, they'll have a pot of funds and those funds will want to be used to replace the income they would've otherwise drawn from the business.

So, how should that be structured? What does that look like? And then leaning over to looking at what that change in asset base looks like from a broader tax perspective. So, they've gone from having businesses qualified for certain types of relief, from inheritance tax purposes, to having assets that won't necessarily qualify. And that's where we'll turn to people like Bea and Nicola to make sure that clients' planning is up to date, structures are correct and fit for purpose, and things like wills have been refreshed.

Andra Ilie:

Thank you very much, Paul. And that leads us nicely into getting Bea's thoughts on this. So, Bea, at what stage do you get involved and also perhaps at what stage do you think you should be involved in a pre-sale planning?

Beatrice Puoti:

It depends on whether the client is an existing client or is a client that's coming through maybe my corporate department or others. Normally if it is an existing client, the pre-liquidity planning will happen naturally in our conversations. And I've done fairly recently... I'm in the process of doing one, and I've done another one. So, effectively they start... because the point is, a businessman who's been involved in running a business has got in his hand, shares. And normally there is no huge amount of liquidity until the liquidity event happens. And that my job, as Paul absolutely said, and I have worked with HSBC, and I know they do that, is converting, making the client think, "Okay, this is now going to be a completely different life for you, different situation," whether they're going to carry on doing business or not.

So, do you want to put some away for your children? Do you want some... you start having a conversation about what you want to do next and what this cash represents for them. And so, the planning comes in and obviously the trust can come in. You can create link companies to have investments in the future, together with the business. And all of these things will need tax clearances which need time, and therefore the planning should come as soon as possible. But also, the intervention and the organisation of the team that is going to help the client needs to be clear because, for example, Nicola and I could overlap. So, I work a lot… I'm doing one of these at the moment with another firm of accountants and we have made really clear the boundaries about who does what so there is no duplication. And also, I'm a great one with team sheets and allocating jobs, and communication of a group of people.

The bank is very important because the bank will need to be present when the liquidity is there, to help what to do. And the bank needs to be involved in what we are proposing, to be ready to accept whatever it is planned that we are doing. So, in answer to your question, the team… and as soon as there is any thought of exiting, I think a team to be put together, and then it is up to us, and I have worked with Nicola and all of these people on the planet, and we all the types that will organise so that the client does not pay for silly fees for people doing the same thing. But actually we all know what we're doing, when we are doing it, and how we're doing it and we all work together. And I think that is the best thing we can ever do for clients.

Andra Ilie:

Beautifully put. And this leads me very nicely into Nicola's area of focus, which I know is one that is very much of interest to business owners. So, Nicola, what are some of the most important pre-sale tax planning areas, at a personal level, for business owners to consider?

Nicola Roberts:

Yes, thanks Andra. So, I have had this conversation actually yesterday with a management team that are looking to exit. And the first thing is really understanding the tax profile of how the deal's going to shake out. So, in that example yesterday, I slightly blew their minds by explaining how earn outs are taxed, because they went, "What do you mean? We have to pay all the tax up front." And they were a role model client actually because we are very, very early on. So, having those conversations, "Look, if this deal is structured this way, this is how it will be taxed. These are the timings. You need to ring-fence this amount of cash to pay your tax liability," because some of these liabilities aren't going to be for two years' time. In that case as well, they've got a bit of a risk depending on how it's structured on employment taxes, on some of the sale proceeds going forward. Is it actually proceeds for the asset? Or is it compensation and incentivisation for staying in the business?

So, really understanding the implications of the deal. Things like Business Asset Disposal Relief, formally known as Entrepreneurs Relief... I don't know why they changed the name, but there you go. That relief can get you a 10% tax rate up to a million pounds, but there are conditions that you need to qualify for, and most of those run over a two-year period. So, coming two months before you sell and going, "Oh, do I qualify for this relief?", it can be a bit too late. And then the last thing I think is just around some of the things that both Paul and Bea have picked up. You are going to move probably from owning an asset that's very tax efficient in terms of it's probably a 100% exempt from inheritance tax, probably qualifies for the things like Business Asset Disposal Relief. And potentially moving into either cash, and therefore being someone who's going to manage your wealth rather than your business, or loan notes that probably don't qualify for these things.

So, actually, thinking about your estate planning, your family, generational planning, now, is really important. And it's also the last thing anyone wants to do. And again, I had a conversation a couple of weeks ago with someone who'd already sold their business last year. They then came to me and said, "Oh, I need to think about setting up my family office and estate planning and what I want, and I'd really like to get this money into a trust." And I just sat there and I went, "I really wish you'd spoken to me six months ago, because I could have got it into a trust very easily when it's a 100% exemption from inheritance tax. It's much more difficult when you're sitting on cash."

And then the final point I just wanted to make, just to pick up what Bea said, is about aligning roles between advisers. Completely agree with that, but, I do think there's a massive benefit clients get from having an accountant and a lawyer and even where we absolutely cross over on quite a few of the tax things actually, but we kind of look at things in a different way I think, and from a different perspective. So, actually, the client getting the benefit of a very experienced accountant, tax adviser and a very experienced lawyer, I think, gives them the best of both worlds.

Andra Ilie:
That's brilliant. Thank you very much, Nicola. I guess it's very much like a team in sports, isn't it? Even though all of the athletes have the same sort of skills almost, they each perform different roles so even if they're in the same team… Excellent, thank you so much. So, what I was thinking we could do now is thinking about theory versus reality. Because I think this is almost like the big, big part. What are some of the main pitfalls and practical challenges that you see in your work with business owners, especially at the time when they get closer to the sale? So, I'm thinking mostly around those that could perhaps have been addressed with more comprehensive planning. Nicola, can I start with you on this one please?

Nicola Roberts:
Yeah, and we've probably picked up on quite a few of these things already actually, Andra. What I just mentioned in terms of the trust planning is an absolutely classic one, and it's really difficult because actually, if you are running a business that's about to be sold, you're probably quite busy, to be honest, both focused on maintaining the value of the business, as well as trying to manage and run the entire sale process. But it does happen. People do come to us unfortunately sometimes a bit too late because they've been very focused, quite rightly, on the company. But it does make it much more difficult to do anything meaningful, and you end up just having to advise on what we've got rather than potentially trying to restructure. So, the further out you can think about it, the better. And for things like estate planning, trust planning, thinking about family offices potentially in the future, the further out you can do that, the better.

Because actually doing it in a time and place when you are not... where you can actually focus on it and not being distracted by the sale process and running the business, the better. And actually, the example I mentioned at the beginning with the individual who's looking to sell and then he didn't want to sell enough so it never happened. He had actually already set up though his entire plan before that date. So, at some point in the future, that will come back, and he will sell but he's already well set up in terms of he knows what's going to who, he's got trusts set up, he's got his will sorted out. So, I think that is probably the biggest pitfall, if you like. And then thinking about that, yeah, you're going to turn from being a business owner to a wealth manager, potentially.

Andra Ilie:

Great. So, what I'm hearing is plan, plan, plan and plan as early as you can, and then plan again. Great. Bea, anything to add?

Beatrice Puoti:

Yes, I think the planning and the trust point and without the international element, because often people stick with a client and because of the nature of how I operate, the first thing I ask is, “Where you from? How long have you been here? Where is your wife from?” Because obviously planning, and if you have an international side, the planning can be even more advantageous. I had a fintech gentleman who I have structured international trust, I put the shares in and he was a non-dom. And the issue there is that you can have a very efficient structuring for at least part of your shares. But if you do that, you need to be able to know whether the company will allow... the board is fine for this, if the sale is going to be affected by having a family trust in place. And the international element makes it even better, because you can do it for UK resident individuals.

But I had another one where the founder married a European, like me, person and actually they were in a community of property regime, matrimonial. What it means is that whatever you own is owned by both spouses, and often things like this are not thought of. And so, knowing who is your vendor, I suppose, and who owns the shares, is also... because it can cause delays at the last minute. So, it's things that you need to think about. It's not just planning, it's also making sure that when you do your due diligence, it is all absolutely clear in terms of the deal.

Andra Ilie:

Great, thank you very much, Bea. And Paul? What are your views?

Paul Bradshaw:

So, both Nicola and Bea raised some great points. I suppose on a slightly softer level, think about how absolutely exhausted you will be in the run-up to the exit. It's emotionally pretty taxing. And going back to something that was discussed quite a bit in the last webinar, you’re going to be working with... the advisers that are helping with the deal, you're going to be seeing a lot of them for six months. So, try and find people that you like working with. High-level here, lots of the corporate teams will know each other, they'll be existing advisers and when it comes to finding the right advisers, meet with a few people. Don't defer appointing the people that you think are best on the basis of fees. And as was said in the last webinar, you can have a sensible conversation with advisers to understand what the fees are likely to be, and usually you could agree things like abort fees, or contingent fees, and success fees in advance.

Andra Ilie:

Some brilliant points there, and again I remember an example with a client where they said they got to know their tax adviser much better than they knew one of their kids, because they had gone through a transaction because they spent so much time together. So, that liking your advisers and trusting them point is very, very important. And finally, Jeremy, can I come to you for any other point on this?

Jeremy Franks:

I think first point I'd make is empathise. I think some great advice an entrepreneur I was working with once told me, empathise... what would you do if you were purchasing your business or similar business? Where would you look? Where would you look to, let's say, shore up? So, very much empathise, I think number one, and alter your perspective. Also don't take your eye off the commercial ball, as it were. I think as we've mentioned this process, an exit process can be very draining and very demanding, and it's very easy to take your eye off the ball from a commercial perspective. That can significantly erode the value of your business and cause major problems. So, hence I think bringing the point which has been reiterated throughout around planning, by doing planning early enables you to juggle those different balls at the same time. And I think it's really critical in that context.

I would also mention key person risk. I've seen a number of processes over the years fall down, or the proceeds consideration be eroded significantly, because of key person risk not being properly addressed before the process commences. So, I had a situation where the Managing Director of the business had health problems, and that really brought home how much value was actually related to him personally. And so actually, it's good planning from a value perspective and making sure that you maximise the consideration you receive to address that early on, and make sure you've got a proper plan in place around that. And then finally, I would just mention, it may be necessary during the process to flex your objectives, so be clear at the outset. What are your priorities amongst your objectives? And give that lots of thought and discuss that with your family, but with also other key decision makers and stakeholders within your business.

Andra Ilie:

And this leads us nicely onto the next question that I wanted to put to you, which is very much around the other stakeholders that are involved in a sale. So, we focused so far on the pre-sale planning aspect for the business owner and also the immediate families. But I also thought maybe we could just shift a little bit to think about some of those other stakeholders, and I know Bea and Nicola have mentioned those management teams before, so perhaps we can have a little bit of a discussion around that. Because I know many of them will hold some share options and other similar instruments. So, how do those come in and what are some of the other stakeholders that perhaps... they don't necessarily get forgotten, but they don't get prioritised as much as others? So, Bea, can I come to you first please and just ask, can you share some thoughts on how do you deal with those other parties? And what are some of the concerns and practicalities here for business owners to think about?

Beatrice Puoti:

One thing I would say that we haven't mentioned is that there is a big difference in selling the shares of a company or selling the asset or selling or purchasing. I have acted... and your stakeholders are different, and the consideration are different too. Because I was doing a large deal for a client and I was actually dealing with the sale of assets throughout the world, little companies with specific assets underneath, and the company went with the personnel. And the question of the other stakeholders is that if you want to sell one company or 100, you need to have a very clear strategy in mind about bringing everyone together. And as Jeremy said, it's absolutely vital that the management, which are the ones that do the everyday work for you, are brought into the sale because any buyer that sees a conflict or a problem with the people who actually know the business, will have a problem.

Now, I don't know what Nicola thinks, but in the past, the incentive of management were not as common as I think they are today. People are much more on board in creating something for the employees. But these are done by a very specialistic group of people who advise on this, and the reason why they are so special, is special advisers, is because they need to understand exactly what type of business it is. They need to look at the tax position of the employees, and the business and then do an incentive that is good for everybody, but is also commercially viable for that type of business, is proportional to the amount of employees in that business. So, the incentive are many types. You can incentivise with shares, and they have income tax consequences on the receiving people, and they will have some CGT.

However, if you don't sell, then share incentives might not be the best thing. Then you can have options, and the options are various, or bonuses, or you can have EMI schemes which can be very, very efficient for the employees and employers. But all of this need to be considered, and they need time in advance. It would go back into the planning. And making sure that is done and thought for that business in the right place, and if the business is multi-jurisdictional, you think about how you bring everyone together. Communication to me is key to make sure the other stakeholders are also brought in. It is just not about planning, it's about talking and making sure that you have a clear strategy, which is delivered to them.

Andra Ilie:

Great, thank you very much, Bea. And Jeremy, if I just come to you for some very brief comments on some of the softer issues as well, that I know we were discussing a few days ago, in terms of stakeholders.

Jeremy Franks:

Thanks, Andra. I think just picking up on Bea's point around communication, I think so important but also some of the less obvious stakeholders, decision makers. So, this could include, let's say, family members who've got shareholdings directly or indirectly in the family business, but aren't involved in the day-to-day management of the business. It can be important to make sure that you're communicating in a timely manner and clearly around the issues and the options and the opportunities but also the consequences. So that, I think, is really important. Middle management, I think often we sometimes neglect middle management, and I've been involved in a number of transactions whereby being very conscious of the important role that middle management plays in the day-to-day running of that business. And when they see, let's say, advisers coming into the office in suits who they've never seen before, it can be quite unnerving and unsettling.

And so, I would always suggest that where possible, and it's not always possible, but where possible versus you're as open and transparent as possible with middle management, but with all employees, because otherwise they can add two and two and come up with five, than four. And so last thing you want is key personnel leaving during that process and that's sometimes what has happened if communication isn't done properly. And then finally, in the interest of time, I'll just mention other stakeholders like trustees, bankers. If the business has loans, you need to make sure that you're keeping all relevant parties in the loop, at the appropriate time.

Andra Ilie:

Thank you. Thank you very much, Jeremy. Some great points there. Now since we work with both domestic and international clients, and I know we've got quite a broad audience from both those areas, I wonder if we could talk about the difference in opportunities depending on residents at the pre-sale stage. And I'd like to start with you, Paul, if I may, because I know you advise UK resident, non-UK domicile clients primarily. So, what are some of the key aspects that you advise on? And perhaps some of the most notable opportunities for non-doms?

Paul Bradshaw:

Okay, thanks Andra. So, headline points. I suppose as I mentioned earlier, think about planning in the new country of residence. Often the transaction’s going to be the genesis of a change in thoughts around what the future looks like and that often won't be staying in the UK. And in fact, I think, as we'll touch on later, we've got an increasing number of people who are very UK in terms of their background, looking to leave the UK or just relocate somewhere slightly sunnier where the food is perhaps slightly better. Now's probably not the time for a political debate, but I don't think we can ignore the fact we've got a general election on the horizon, and we'll probably see changes, or we could well see changes with regards to how non-domiciliaries are going to be treated in the future with regards to taxation.

And for our international clients, I suppose, looking at that in a more focused way, who've been in the UK for longer periods, we'll often see them as being... Nicola have said, looking to put assets into trusts for future generations, essentially really looking at ways of preserving their wealth for future generations. Lots of our clients will receive sums that are well in excess of their requirements and wanting to do something to be efficient from a UK perspective is sensible, but we really shouldn't be tying ourselves into UK-facing structures if ultimately clients are not going to be UK tax resident.

And we've got this transition where clients go from owning, as Nicola said, they go from owning assets where we've got business relief on them, to next day they sell, they get cash, they haven't got business relief. What does that mean to them? Things like making sure we've got wills up to date, if it's decided not to put assets into trust. So, we know there's this change in profile of the client's estate. Do we bring in people to talk about life insurance with the client? And what might that mean? There's a whole range of things, I think, that need to be considered, and lots of opportunities that can be easily overlooked without the right team around clients.

Andra Ilie:

Thank you, Paul. Jeremy, any thoughts on this?

Jeremy Franks:

First time I've done that, speaking when mute. I knew I was going to do it today. I think yes, to reiterate what Paul has said, I think you need to… what I always say to clients is, always build in a degree of flexibility into your planning because you never know how your circumstances may change, may alter. And so, in that context, make sure that the planning that you are considering gives you that flexibility. And a good example of that is, I always remember a client a number of years ago when I was working with Nicola in practice, sold his business and went to Switzerland, and unfortunately his mother-in-law, shortly after, became seriously ill. And so, his wife had to come back and he wasn't happy in Switzerland without his wife, understandably. And so, he had to alter his circumstances and that actually crystallised a very significant tax charge. But the point is, you need to have flexibility to meet any change in circumstances that you might experience in the future.

Andra Ilie:

Thank you. And Bea and perhaps Nicola, I know you both advise extensively on relocation and some of these aspects so can I come to you for your thoughts?

Beatrice:

Yeah, no, it is a very hot topic at the moment. There are two points where people usually ask whether international non-residents... it would be better. One is that pre-sale, and one is on liquidity event. I mean the pre-sale is the... the issue I have, although I move people around, is that on a pre-sale point of view, you need to be sure that you can actually do the deal from wherever it is that you decide to go.

And I think that from a practical point of view, it isn't easy to be non-UK resident under all the UK rules and run a deal of the sale of the most important asset that you have built for many, many years from wherever you are. So, first point is commercial. Also, if you decide to do that you need to commit to be outside the UK for five years, which is a long time.

So, you need it to work for you and your family, and you need to see your own circumstances to make sure that it is what you really want. Also, you need to make sure that you are in a country where actually it is tax neutral or advantageous to be in. I had somebody that called me up the other day, and he was about to move to Portugal to do something that would trigger a tax liability which actually not covered under the regime of Portugal. And I told him, I said, "Have you taken advice?” He said, “Ooh, I did a Google search," which is not unusual, I have to say. So, again, if you have to do something like that and you're planning to do major deals, but if you want to move in any event I'm doing this jurisdiction inquiry a lot at the moment for various reasons.

And I always say to people nowadays, "You have to be prepared to be in the country that you choose more than you are anywhere else in the world, because this is how the world is." So, you got to be in a place that you like. You can't just decide to go, to become resident somewhere and then not be there because it doesn't work anymore, and it is not good advice. So, you need to look at your life and your assets and what you're planning to do, and your family, and then decide where to go. And even if you want to go for a change of lifestyle, you do need to keep all of this in mind because it isn't easy. If you plan it properly, it can work perfectly well, but it's got to be done properly and you need to exit the UK well, and enter a different country as well, so that the two are protecting each other in the position for the client.

Andra Ilie:

Some really helpful points there. And I guess it goes to how do you know if you're going to like it? Because on paper it may sound great but when you move there, how do you know? We had that example of Monaco and France, that back in my days in practice when working with Nicola, we had quite a lot of people who would go to Monaco and then end up being resident in France. So, it's all of those matters that need considering. So, on that note Nicola, what are you seeing?

Nicola Roberts:

Yeah, and I'd echo all of the comments already made, and I've got another story about a couple who moved outside the UK actually to sell the business, and they could manage it and that was all fine and they did sell it, no tax to pay. But about two years in of living abroad, the spouse turned around and said, "That's it, I've had enough. I hate it, I'm going back to England." And it was the husband who said, "No darling, but we'll have a big tax liability if we go back." And she said, "If we don't go back, I'm going to divorce you, and that's going to cost more." And it's a funny story from that perspective, but you've probably got to go for six years in a lot of cases actually. It's a long time and you don't know whether you're going to like it, is the honest answer.

And so, these things happen similar to the story Jeremy... you've got to be a bit flexible. Do your due diligence on the country, spend some time there, do what you can, but you don't really know. And some of it is a bit of a leap in the dark. I think the other thing as well, picking up on what Bea said, the jurisdictions are different. They have different tax profiles. So, Portugal for example, I think people quite like, because I think people think, "Oh, it's probably quite a nice place to live," which it probably is, but it doesn't really work, for example, if you've got private equity investments because Portugal blacklists all offshore jurisdictions. And most private equity investments, pretty vanilla retail ones, they're all set up in Cayman, or other jurisdictions so it doesn't really work. If you're selling and you've got, again, some sort of earn out or continuing role in the business, can you do it from the jurisdiction you are in? Are you going to have to keep coming back to the UK to perform your role? That's going to be taxable here if you are, you have to keep filing a tax return.

So, I think actually the sale of a business can give a lot of people quite a lot of freedom, and so it is an opportunity to take stock and go, "Well actually, what do I want?" And again, I had a client a couple of years ago who sold up and went abroad because they're like, "Well, I haven't got to be here all the time now. I'm not tied to the UK, I can go and do some other stuff and travel around a bit." So, it's a good opportunity to do that. But for the most part, you have got to think about your life, and what's manageable and don't underestimate the hassle of counting days and people like me telling you, “You can't come back, I'm afraid, for Christmas because you've already spent too much time here.”

Andra Ilie:

Brilliant, thank you very much Nicola. And on the same sort of vein, we've touched quite a bit upon what comes next after you sold. And I know the focus for today is pre-sale planning, but I do think it's really important that business owners think about that piece around what comes next, and whether it is Portugal or somewhere else, or whether it's starting another venture, I just wanted to ask for your thoughts in terms of what you are seeing business owners realistically doing post-exit. And for some it might be a partial exit. For some it might be a full exit, they're only exit. So, what do you see, Jeremy, people doing after an exit? And how can you and the team help?

Jeremy Franks:

I think what we try and do is, as I mentioned before, hold the client's hand through the process, but also after the process as well. And what I would always suggest to clients is that they just take some time to actually appreciate what they've achieved. I think they're often so busy. They've often been working 17, 18 hour days, sometimes seven days a week, for the last 20, 25, 30 years. And that has a big psychological impact when all of a sudden... let's say you've sold your business and you walk off into the sunset. Just appreciate what you've achieved, but also buy yourself some time to be clear on what you want to achieve with the next chapter of your life. So, that may well be not doing anything business orientated, but it may well be, “Well actually, I want to use the skills, the networks, the experience I've got, but I want to use it in a different way. So, I want to be perhaps an angel investor,” or you spotted another opportunity that you feel passionate about. Take time to think about your options in that context.

What we try and do as well is, I think, building on what Paul mentioned before and Nicola has mentioned, we try and help clients think about the next stage of their life. And they've sold their asset, which was the value on, let's say, their personal balance sheet, and they've now got a pile of cash, loan notes, investments. What we try and do is help them protect that newly acquired wealth from potential threats. That may be relationship breakdowns with the children. And so, we will often work with lawyers like Beatrice but also tax advisers like Nicola, to consider what they can do in that context, how they can protect from obvious threats, because their wealth may now be publicised. People may know actually how wealthy they are for the first time, and that will create threats and opportunities. And they actually, perhaps in that context, need their advisers even more than they've ever needed them.

Andra Ilie:

Thank you. Thank you very much, Jeremy. Paul?

Paul Bradshaw:

Oh, where to start? So, what do we see people doing after exit? As we've said a number of times, lots of people looking to relocate, return home, wherever that might be. Some clients wanting to buy what might be called trophy assets. We do lots there around helping clients finance or structure those. We've got lots of good capabilities on the debt and structuring side. Depending on the scale of the exit, we see lots of clients wanting to put in place dynastic structures for longer term wealth management, leading on something that we've all said I think, moving away from being a family that runs a business rather to a family that's running wealth.

Generally, these are all nice problems to have, but there are some issues that might present themselves that do seem quite daunting, certainly with regards to relocating and I'm just generally a believer in that there's no problem that can't be solved as long as you've got the right team around you. You can think about what needs to be done. You can find people to help solve problems. You just need good people around you that you trust and can work with.

Andra Ilie:

Brilliant, thank you Paul. And I know you touched upon the upcoming elections earlier. I know we haven't spoken about them too much, but for those business owners who, post-sale, might want to stay closer to home, Nicola, can I just ask for your thoughts in terms of what are you saying to people? Given we don't know very much at the moment in terms of what they can expect?

Nicola Roberts:

Agreed. Funnily enough, while I've been on this webinar, I've had an email from a client saying what's the view of what Labour are going to do with the CGT rate? And the honest answer is, we don't know, because they haven't said. What they have said is they don't like the current regime of taxing carried interest, which is a 28% CGT rate so they intimated they would tax that as normal income. They've also said they're going to replace the non-dom regime with a more temporary arriver's regime, but absolutely no more details than that. So, no idea what's going to happen to trusts or anything like that. And they haven't said anything about CGT.

So, the past is never an indicator of the future, I think, is what you guys always say. But under the last Labour government, when Gordon Brown was the Chancellor, CGT was aligned with income tax rates, although the top rate was only 40% then, and we had something called taper relief, which reduced down the top rate of tax to a 10% rate after two years and various other conditions. And it was George Osborne who actually came in and scrapped that and brought in a flat rate of CGT. So, we don't know. I think probably have to assume they're not going to go down, but we don't actually know any more than that.

Andra Ilie:

Great, thank you. And Bea, anything to add on that?

Beatrice:

No, I think that… The thing is I'm hoping that in the Autumn, because at the moment we don't know what Labour is even thinking. I am completely agnostic, but I think anything is possible. And if we have learned anything in the last few years, anything is possible. So, I think in October maybe with all the parties that during the conferences, we will have more idea because at the moment we have no idea what is any plan of Labour. We don't know. They say they don't like things, but they haven't actually said what they're going to do. And I'm hoping that it will be clear, and I think, to be honest, I don't like scaring clients, I like to... I really don't. I think we should all be sitting back. It's a little bit like people with investments. Sit back, wait. At the moment there is a turmoil but things will be clear, and at the relevant time you will have the time to act. But I think that no one at the moment... there's a lot of people doing conferences on it. And I just don't know what they're saying because nobody knows, and it literally is the most unclear. Still, I think everybody should plan as they are, it is illegal to back the large… The planning, the tax, is what it is today, and then for the future you just need to wait a second until things are clarified.

Andra Ilie:

So, what I'm hearing, I guess, from both of you is be patient and hang in there until we know more. Great.

Jeremy Franks:

Sorry Andra, just to interrupt... I was just going to say as well, maybe for Nicola or Beatrice, are you seeing any concern amongst, let's say, individuals who sold their business a number of years ago, but have taken loan notes? Because obviously with loan notes you could potentially be deferring... if CGT rates go up, you could be deferring into a higher tax environment. Have you seen any concern amongst clients who are in that position?

Nicola Roberts:

Not yet, but I'm sure people will be concerned about that, but I think we're just so much in an unknown space at the minute about what's going to happen, but it's a bit pointless worrying about it. We can do no more.

Beatrice:

People will worry about CGT. People will, yeah.

Andra Ilie:

Great. Now I wanted to thank everybody for your thoughts and insights. It's been great. Some really interesting points. I wanted to spend the next few minutes on taking some questions from the audience, because we've had some really good ones. So, I'm going to try and cluster them together around some themes and there's a few of them, which I think perhaps I should come to you, Nicola, on. It's very much around what other jurisdictions you are seeing, aside from Portugal. Where else do you see business owners specifically moving post-sale? And any practicalities to keep in mind, relevant to those jurisdictions?

Nicola Roberts:

I think at the minute Italy is probably one of the most popular jurisdictions that people look at. So, Italy has got effective… it's kind of a non-dom regime, but if you're not Italian, or in fact it even applies to returning Italians who haven't lived there for a long time. You can go there for 10 years and basically pay 100,000 euros a year. It's a flat rate of tax. There's no rules around remitting money into Italy. You can do what you want in terms of that, which is why it's not really like the non-dom regime here. You can also get a pre-ruling before you go in, which I would definitely recommend, if you've got things like existing trusts already set up, to make sure that they are compliant with the regime, and you've got certainty before you go.

You do need to have a property available in Italy before you can go there. So, there is a little bit of... you do need to invest a bit. You've got to be kind of clear you're going to go, get your property, before you can get your visa and immigration and everything else. Of course that's, post-Brexit, depending on what passports you already hold, a bit more complicated. But that's pretty popular. If you do work in Italy, you will have to pay tax in Italy. But other than that, it's a pretty generous regime to be honest. Portugal is the other one, and then Switzerland still remains reasonably popular. I think it's just because people think it'd be quite a nice place to live. And then probably there's always interest in places like the Channel Islands and some of the very low-taxed jurisdictions. But I think they come down to lifestyle choices, I think. They're not for everyone.

Andra Ilie:

Yeah. And Bea? Are you seeing similar jurisdictions?

Beatrice:

I'm Italian and I was an Italian tax lawyer so I do a lot of the... the Italian regime, it is a lot of interest but it is quite complicated to achieve to make sure that you do it properly, and if you ever had a property available to you, you were going on holiday in Italy before decided to move, be very, very wary about actually going for the regime, and the clearance, as Nicola said. It's very, very important. The other thing that I'm asked lately is the expansion of the Beckham rule.

The Beckham rule in Spain is called after David Beckham, for those who don't know who, when he went to play football, they created a whole tax regime for him to limit his taxation overseas, and effectively now anybody can apply to… if you go to Spain to run a business and you need to have a proper business and to be in a business, you are employed by that business in Spain, you can have an agreement with the Spanish tax authorities for five years, to have your taxation limited to some aspect, because a lot of people from England love Spain.

I have had more and more in Paris and I'm looking at that more and more frequently. I have to say Monaco, I think, is a winner of uncertainty, because it's so easy to become resident in Monaco that a lot of people are going there or considering going there. There is some interest also in further away, countries in the Caribbean and obviously there are all of these regimes which are being done. If people are concerned about Europe and what the EU are going to do in terms of harmonising taxes, they go further afield. Obviously, that is a different commitment. Some people really like the sunshine and decide... in my experience, all of this is being dictated by age, and by what people are doing at what point they are having their liquidity event, and what is the next step to do.

But there is an enormous amount of interest in all of the regimes around. I have seen a decline in interest in Malta for some reason. There was a period where everybody was interested and now it's less, but everybody is enquiring about everywhere. And also, interestingly also passports. Passports since Brexit, passports are another new entry where people want to know whether they can have a second passport. I don't know whether everybody else had this experience, which causes problem to the banks, by the way.

Andra Ilie:

Okay. Well, that's super interesting and I don't know, Jeremy and/or Paul, if you had any others to add? Or any thoughts on this?

Jeremy Franks:

I'd probably just mention Dubai. Certainly seeing, I was over in Dubai last month and seeing quite a lot of individuals from all around the world in Dubai. I think it's made itself a far more attractive tax regime, but also from a lifestyle perspective. And I think all too often there's too much emphasis on tax, and actually, I think to the point which Nicola was raising earlier, it's so important just to think about, well actually, where you're going to be happy? And tax, yes, is a consideration but shouldn't necessarily be the main driver in this context. Obviously, it depends on your circumstances and your own priorities, but I would always say don't neglect what's going to make you happy.

Andra Ilie:

Beautifully put again, Jeremy. And Paul?

Paul Bradshaw:

Yeah. Just don't choose to live somewhere based on the tax profile of that country. Choose where you want to spend the rest of your life, or you see yourself living in the longer term and then find the right team of advisers to make sure you have a soft landing in that country. Don't let tax drive how you live, or try not to, to the extent that that's possible.

Andra Ilie:

Great, thank you very much. Another question that's quite interesting and perhaps more for you, Paul and Bea, how can you help plan for and mitigate a situation where a shareholder passes away between a transaction being agreed and completed? So, I don't know if you had a situation like this, but I know, Jeremy, you mentioned earlier the illness point, if somebody gets ill in the middle of a transaction? So, how do you deal with those sorts of situations? And what planning can you put in place to prevent it?

Paul Bradshaw:

So, I suppose planning in the context here is if the other shareholder were to be... that horrible situation where they were to pass away, then we need to think about what would happen to the shares. What type of agreements are in place to either pass those shares across to the other shareholders without the estate losing the relevant reliefs that are available, that we've discussed earlier. And that's where we need to lean on to the likes of Bea and Nicola, to make sure that these agreements, if they are put in place, are properly drafted so that we're not effectively putting the client at a disadvantage, or the client's estate at a disadvantage. It's quite easy to get wrong, and it's very expensive if it goes wrong.

Jeremy Franks:

I would just also refer to the point I made earlier around key person risk. Because if you've structured your business as best as possible, and you are, let's say, minimising key person risk, then if that event were to happen, and let's say a key decision maker, shareholder, passes away unexpectedly during the process, it will minimise or should minimise the impact of that on the sales process. And so, it really does bring home the importance of making sure that no one person is indispensable to that business, and that you do have succession plans in place from a business strategic perspective. But then I let Beatrice and Nicola talk to... well, just some of the practical opportunities around making sure your will's up to date and so on.

Beatrice:

The first thing is the power of attorney. Who's got power because there are two things. One thing that came out very clear and loud during COVID is that people can get unwell for a long period of time, unable to deal with things. So, power of attorneys are now at the forefront of, every time I do a will I'll ask people, "Will you do a power?". And if a power is wide enough they should be able... and whenever you do a power of attorney, you should think about what type of actions should attorney take. And on that, the other thing that I wanted to say which links very much to what we said before, is that, I forgot to say that people move around, and they don't realise that the succession law of the country where they go might apply to their assets. So, they go from a place like in England where you have full freedom of disposition to a country perhaps in Europe, where you have rights of other people over your assets.

So, if the businessman is moved somewhere else and they did pass away, then you have all of that to deal with also. So, having the wills and estate thought very carefully during a transaction and, as Jeremy said, having the key main insurances, and all of that should be obviously thought at the planning. If they have not thought at the planning side, you have all of these difficulties then, I'm afraid. The only thing to do is to just get somebody involved immediately to try to unravel this, and make sure that they do the absolute best for the family at that very difficult time. But there are things which can be easily prevented if only you sit down for five minutes and think about your affairs. I know it's difficult while you are doing all of this, but it is really important.

Jeremy Franks:

It does also illustrate the importance of, let's say, key person insurance, so that businesses insure key man risk, or key person risk. And also, maybe a point for Nicola, it also brings into sharp focus the importance of business property relief, which is an inheritance tax exemption, which often applies from quota trading companies. So, effectively, that asset could be free from inheritance tax. So again, making sure your will is up to date so that potentially goes to maybe not the spouse, because there's a spousal exemption, so you're not doubling up on exemptions. There's also, on death, an uplifting base cost for capital gain tax purposes. So, what does that practically mean? It means the historic gain on those shares is wiped out. So again, there could be some opportunities and planning, and it really reiterates the importance of the point we made earlier about having the team around you that is proactive, can deal with changing circumstances at short notice, but understands actually whether that business would qualify for business property relief, in the first instance because it's not always the case. But I'll let Nicola talk to that.

Nicola Roberts:

Probably I don't have much to add to that Jeremy. Exactly. And we talked about it earlier, in terms of if you've got an unlisted trading company, and it qualifies for business relief, it's 100% exempt from inheritance tax. So, opportunity for you to get it into a trust, either during your life or on death, equally applicable. Or at least think about whether you want to give that to your spouse, that asset, because assets transferred to your spouse in the UK are tax free anyway. So, it would be an opportunity to get it to the next generation, even as a direct gift. Not all companies qualify, even if they're unlisted and trading. There are certain conditions you need to qualify for.

The big one is whether you've got too many investments embedded within your company. So, large cash balances, property investments not being used for the business. So, we do quite a lot of work actually at looking at companies, because often private companies, they evolve. Certain things are sometimes acquired within the business because that's where the money is at the time, to be honest. So, we do quite a lot of work in terms of demerging assets away from businesses, to keep the core business that completely qualify, maybe putting personal assets somewhere else. All that needs to be looked at.

Andra Ilie:

Brilliant, thank you. Thank you very much for all of that. And I guess what I'm hearing overall from this conversation is very much around how important it is to plan early, and even when you don't know what you don't know, make sure you find and ask the right people and trust that they'll be able to guide you in the right direction. We are reaching the end of our allotted time this morning, but before we close, what I would like to do is I'd like to ask each of you if you could just leave our listeners with a final closing thought. So, a very brief 30 second key takeaway, or closing statement, however you'd like to call it. And for that I'd like to start with you, Nicola, if I may?

Nicola Roberts:

Thanks, Andra. So, look, even though I am a tax adviser and I try and help people with that aspect, as we've said already, don't let the tax tail wag the dog. It's about the commercial outcome. Getting your equity story right. Making sure you know what you're going to sell, who to, when. And then absolutely, plan early, get your ducks in a row, come and talk to people like me, hopefully. But we'll work the tax out around what you want to achieve. Don't do it the other way around.

Andra Ilie:

Thank you very much, Nicola. And Bea?

Beatrice:

I totally agree and actually I say something I do always say, just to sit back and think of what you have achieved, and then think how incredible it is. For my business, my entrepreneurs, I am full of admiration for them. And they often forget to see what an amazing problem they have is that to realise a lifetime of great success. And then, again, I completely echo what... reap the rewards in the way you want to, and we can all sort it out in the best possible way around what they want. Nobody should be in a straitjacket for a tax point of view. Everybody should enjoy their hard-earned cash.

Andra Ilie:

Brilliant. I love the straitjacket analogy. Jeremy?

Jeremy Franks:

I think good communication is key throughout the process, with family members, shareholders and that also links to your advisers, making sure that you've got a team of advisers that you are comfortable with, that understand you, how you work, your objectives, because you never know when you're going to really need to lean on them. God forbid something happens to you, and you are out of action temporarily or permanently, making sure you've got those team advisers around the family, really important for your trust. And flexibility, I think that's absolutely, critically important. No one knows what's around the corner, so having flexibility into your plans for the future so that you can adapt to changing circumstances. And that's only one thing we learned after COVID, and I think just take a moment to actually appreciate what you've achieved and enjoy it.

Andra Ilie:

Brilliant, thank you very much, Jeremy. And Paul?

Paul Bradshaw:

A common theme, right? Get the right team of advisers. It's a big task that you're about to encounter, and undoubtedly there'll be bumps in the road in that process. But just generally in life, I don't think there's any problem that you encounter that you can't solve. Just if you've got the right people, if the people that you trust and you can work with, then you can generally find your way through this stuff. And just take time to chill out afterwards, you'll be exhausted. Don't try and book in the next deal the week after, try and at least have a couple of weeks off. And then from there it's onwards, I guess.

Andra Ilie:

Brilliant. Thank you very much and thank you very much, Bea and Nicola, Jeremy and Paul, for sharing your views and thoughts. I'm sure our viewers have garnered some very useful insights. I know I have. And for our audience today, I do hope you've enjoyed the session and the discussion. And if you have any feedback, please do complete the share feedback tab. If there is anything from today's conversation that you found particularly interesting, or you'd like to know more about, or perhaps you'd like to speak to one of our experts, please do take the opportunity to get in touch with your HSBC Relationship Manager. And finally, don't forget to sign up for our future Beyond Business Ownership webinars. The next one is coming up at the end of April on the topic of exit to private equity. Thank you very much everybody and wishing you all a lovely rest of the week.