VAN HUYSSTEENS
COMMERCIAL ATTORNEYS

DENOVO

MAY
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SELLING YOUR NAME – INCOME TAX OR CAPITAL GAIN TAX ON GOODWILL?

The sale and purchase of goodwill is primarily regarded in our tax law to be a transaction on capital account. The proceeds received by the seller will be capital in nature and may be subject to capital gains tax.

Goodwill can be said to include whatever adds value to a business by reason of situation, name & reputation, connection, introduction to old clientele and agreed absence from competition. Goodwill is also defined as an 'asset' in schedule 8 to the Income Tax Act for capital gains tax purposes.

However, when goodwill is sold and paid for, not in a total lump sum, but in return for annuities or annual share in profits, the seller will be liable to include such amounts received in his normal income tax as 'gross income'. Further, it may be that the buyer cannot claim such annuity or annual share in profit payments as a deduction, since the annuities or annual share in profit payments is pursuant to the acquisition of a capital asset.

Gone are the days where all that was required was the business being sold lock, stock and barrel for a lump sum. It is advised that the sum paid for the business should be allocated to individual items such as goodwill, stock, assets, etc. for the receipt amount the sale of a business to be split into gross income and capital receipts.

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