Selling a Business

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Share Sale vs Asset Sale

When you are selling your business, one of the most important considerations is whether you structure it as an asset (business) sale or a share sale.

A share sale is where you sell all of the shares in the company to the buyer. Upon completion of the transaction, the buyer will own all of the shares in the company and in turn have control of the assets.

An asset sale is where you sell the assets of the company (such as its equipment, intellectual property and goodwill) to the buyer, however the buyer does not get the shares in the selling company. In this article we will focus on the key differences between a share sale and an asset sale, and set out some of the advantages and disadvantages of each.

	SHARE SALE	ASSET SALE
DIFFERENCE	The shares are sold so the buyer becomes a shareholder in the company and takes control of all of the assets of the company acquired.	The parties are in control of what assets of the business are sold.
LIABILITIES	All of the assets and liabilities including historical, actual, contingent and unknown liabilities of the business are sold with the business. **EXAMPLE** - if a customer of the business was given negligent advice or sold a defective product, they would claim against the company that the buyer now owns and the buyer will be responsible for defending/paying out the claim. The seller may provide the buyer with an indemnity so that the buyer can sue the seller in the event of a historical claim being made.	No liabilities are generally transferred across, other than those specifically assumed under the contract of sale.
EMPLOYEES	The company's employees generally remain employed by the company (subject to the contract).	The buyer decides whether to offer employment to employees.
TAX LIABILITY	Stamp duty is generally not payable and GST generally does not apply. The seller may be eligible for a 50% CGT discount on the sale. A potential benefit to the buyer is that certain tax losses can be carried forward with the company.	Subject to stamp duty in some Australian states and may also attract GST, except where the sale is considered a going-concern. There is no 50% CGT discount available. Tax losses stay with the seller company.
DISCLOSURE	To mitigate the additional risks associated, the buyer will need to engage in a much more extensive and detailed due diligence.	Due diligence is not as onerous as there is limited opportunity for a past customer or employee to come out of the woodwork and make a claim against the buyer's entity.
SECURITY	The assets do not transfer therefore the security does not need to be released or assigned, however the buyer should still investigate what securities exist and determine if it wants to take them or not.	The seller usually procures the release of any security interests affecting the assets of the business prior to settlement.

KEY TAKEAWAY MESSAGE

When selling a business, it is important to determine which structure is best for you from an early stage as it will determine the entire process. The above are just some of the matters that we need to consider. If you are planning on selling your business, get in touch with an experienced team member of Beck Legal today and we can assist you to find the most suitable structure for your business sale.