

Share Purchase v Asset Purchase

Share Purchase	Asset Purchase
All assets and liabilities The company is sold inclusive of all its assets and liabilities, known and unknown e.g. tax liabilities.	Selected assets and liabilities The purchaser 'cherry picks' the assets it wants and invariably leaves behind the liabilities with the seller. Some liabilities transfer by law such as those in connection with employees.
Warranties and indemnities Given the risk in taking the company subject to all liabilities, the purchaser will expect the seller to give extensive warranties and indemnities as protection against unknown liabilities.	Warranties and indemnities As most liabilities will be left behind with the seller, limited warranties and indemnities will be required or expected.
Disclosure A detailed disclosure process will be required by the seller and his advisers to limit the seller's liability under the warranties by excluding matters which have been disclosed to the purchaser.	Disclosure Given the reduced number of warranties, the disclosure process carried out by the seller and his advisers will be greatly reduced when compared with a share sale.
Due Diligence The purchaser and his advisers should carry out extensive and detailed due diligence into the financial, legal and commercial position of the company due to the fact that it is transferred with all its assets and liabilities.	Due Diligence Compared to the due diligence in a share purchase this will be limited as few liabilities will transfer with the assets.
Trading Position The relationship between the company and its customers and suppliers should not change; It is only the ultimate ownership of the company that is changing. Therefore there will be little effect unless the contracts contain a change of ownership clause which could trigger termination.	Trading Position Contracts will be with the seller and therefore they will need to be novated or assigned to the purchaser. Invariably this requires the consent of the other party to the contract. Often this will not be a problem but it can be time consuming and the other contracting party could seek to impose new terms to gain advantage from the change, or even refuse the assignment.
Method of Transfer A simple stock transfer form transfers ownership of the shares although the contract that goes before it will be lengthy and detailed.	Method of Transfer Various documents may be needed as well as the contract such as an assignment of goodwill, transfers of the land interests, deeds of novation for the contracts.
Stamp Duty Stamp Duty is paid at 0.5% on the value paid for the shares, e.g. a purchase price of £1,000,000 will incur duty of £5,000.	Stamp Duty Stamp Duty Land Tax is charged on the part of the consideration allocated to land and any inherent goodwill in the land. It is no longer paid on other assets acquired.

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Taxation Capital Gains Tax may be payable by an individual seller if a number of conditions are met. Business Asset Disposal Relief, which effectively reduces the tax rate, may be available to the seller if pre-conditions are satisfied, on lifetime gains of up to £1m. A corporate seller may not have to pay any CGT on a disposal of shares. Tax advice must be taken.	Taxation There may be allowances available to a purchaser on the assets acquired. For a seller, there may be a double tax charge, firstly on the seller company and secondly on the shareholders on distribution of the proceeds. Tax advice must be taken.
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If you would like to know more about this topic or our legal services, please contact Mark Williams on 01323 435900 or mark.williams@gabyhardwicke.co.uk

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