

Assets Sales vs Shares Sales: **Tax Strategies**

There are two ways a buyer can acquire a business carried on by a company, these are an asset purchase and a share purchase. With an asset deal, the buyer is acquiring the assets and rights of the business whereas with a share deal, the buyer is acquiring all the shares in the company which carries on the business, which includes all assets, liabilities and obligations. The tax treatment of the two alternatives is very different and can be a determining factor when deciding which to pursue.

As a very general rule, a Seller will prefer a share deal (for tax efficiency) whereas a Buyer would prefer an assets deal (to limit liability for historic issues), however it is often the Seller's preference that prevails. Perhaps the largest disadvantage for most Sellers on an asset deal is that there is a potential double tax charge, meaning that the Seller can be taxed twice. This arises as the company, which operates the business that is being sold (and is, in effect, the "Seller" in this instance), can be liable to corporation tax on chargeable gains that arise on the sale of the assets and then a further tax charge arises when those profits are extracted from the company.

However, it is important to note that there are many exceptions to the general rule as to which party would prefer which type of sale and purchase and much will depend on the party's unique tax and commercial position. For example, an individual who owns their company may be less concerned about profit extraction if they were simply reinvesting the sale proceeds in the company or the company may have losses that lend themselves to efficient structuring. Similarly, a buyer might in certain situations prefer a share purchase if they could pay stamp duty on shares at 0.5% as opposed to higher rates of Stamp Duty Land Tax on property.

In all situations we would advise that the parties take detailed tax advice. Failure to accurately bespoke the deal structure can result in significant, unnecessary tax leakage.