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Top secret cheat sheet

ASSETS vs SHARE PURCHASES

The two most common methods of buying a business in the UK are:

Asset purchase

This involves the buyer acquiring a bundle of assets and rights, and sometimes assuming responsibility for certain liabilities, relating to the target business and often the specific assets.

Share purchase

This involves the buyer acquiring all of the shares in the company which carries on the target business and therefore all the assets and liabilities that come with it.

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Both transaction structures are useful to both buyers and sellers for different reasons and can be used to achieve broadly similar objectives, however, there is substantial variation in the legal effect of the two methods. Looking at each of these transaction types in turn, there are pros and cons for buyers and sellers which can help to identify which deal structure is most appropriate to the proposed acquisition.

ASSET PURCHASE

PROS	CONS
Buyer can choose which assets and liabilities of a business (if any) it acquires. **(Buyer)**	Corporate sellers will not receive the sale proceeds directly. **(Seller)**
Transaction not subject to statutory controls on financial promotions and financial assistance. **(Buyer and Seller)**	Seller may be left with problem assets or liabilities that the buyer is not prepared to take on. **(Seller)**
Transaction unlikely to require consent of shareholders. (Buyer and Seller)	More complex transaction process and documentation. **(Buyer and Seller)**
The seller can choose to sell a particular sector or focus of their business and carry on trading with the remaining assets and customers. **(Seller)**	Parties must comply with applicable seller obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). **(Buyer and Seller)**

SHARE PURCHASE

PROS	CONS
Transaction structure is often simpler than an asset purchase as the buyer is acquiring a single asset (that is, the target shares). (Buyer and Seller)	Buyer acquires the target company subject to all its historic and current liabilities which can therefore lead to extensive due diligence being required. (Buyer)
TUPE is unlikely to apply to the transaction, thus avoiding the need to inform and consult with the employees of the target business. (Buyer and Seller)	If the buyer requires 100% ownership of the target business, all of seller's shareholders must agree to the transaction unless agreements are in place with minority shareholders. (Buyer and Seller)
Sale proceeds are received by the seller directly and they are able to make a clean break from the business (depending on the final terms). **(Seller)**	

These reflect just some of the key considerations to be taken into account when considering the structuring of a business sale or acquisition, however, it is important to take both legal and tax advice when negotiating the terms of a transaction to ensure what is being agreed is right for you. If you do wish to talk through the options available and their suitability to your transaction **please get in touch**.

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