Introduction

This section covers the main tax issues that arise when buying or selling a business owned by a sole trader, a partnership or a company. The tax consequences differ, depending on whether the business is owned by a company on the one hand or by a sole trader or partnership on the other.

- **Buying and selling an unincorporated business** looks at businesses owned by sole traders and partnerships,
- **Buying and selling an incorporated business** looks at businesses owned by a limited company.

This section is intended to give an outline of the tax issues and main consequences but does not cover all the details and exceptions to the main rules. The rules are highly complicated and this section is not a substitute for specific professional advice.

Buying and selling an unincorporated business

There are two main ways in which the buyer of a business owned by a sole trader or partnership can acquire the trade and assets. The buyer could either offer cash or, if the buyer is a company, it could also offer its own shares or loan stock, or any combination of these. Capital gains tax (CGT) liability will normally arise in the same way whatever the nature of the consideration.

The seller’s CGT liability

The seller is chargeable to CGT on the sale of each chargeable asset of the business. In a partnership, each partner is chargeable on their share of the gain on each asset sold.

- The chargeable assets of a business can include:
  - The business premises, whether freehold or leasehold.
  - Trade marks and patents.
  - Goodwill.
  - Occasionally, items of plant and machinery that are sold for more than their original cost.
- Assets such as stock, trade debtors, cars and business cash are not subject to CGT.
- The basic capital gain or loss on an asset is calculated by deducting from the sale proceeds the costs of buying, selling and improving the asset.
- The value of the asset at 31 March 1982 is deducted instead of the costs incurred before that date, if the seller acquired the asset before 31 March 1982.

Entrepreneurs’ relief

A sole trader or partner may be able to claim entrepreneurs’ relief on disposals of the whole or part of a trading business.

- Gains that qualify for entrepreneurs’ relief are taxed at 10%.
- The relief is available on gains of up to £10 million.
- The relief can be claimed on more than one occasion up to a lifetime total of £10 million.

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- The person must have owned the business or been a member of the partnership that owns the business throughout the year ending with the disposal.

- If the disposal of a business consists of disposals of more than one asset, the gains and losses are added together before calculating entrepreneurs' relief.

The gain that qualifies for relief is calculated before deduction of any allowable losses (other than any losses on assets that are part of the disposal of the business) and before the annual exemption.

Partners can also claim entrepreneurs' relief on disposals of business assets owned personally and associated with a sale of a business by a partner that itself qualifies for entrepreneurs' relief.

- The partner must dispose of their interest in the partnership assets at the same time and withdraw from the business.

- The assets must have been in use for the purpose of the business throughout the year ending with the sale of the business.

- Relief is restricted where all or part of the assets were not used for the partnership trade at any time during the period of ownership.

- Relief is also restricted where the partnership paid rent for use of the asset after 5 April 2008. The restriction is based on the proportion of market rent charged over the whole period of ownership, ignoring any rent for periods before 6 April 2008.

Rollover relief

If the proceeds of the sale of qualifying business assets are reinvested in further qualifying business assets, any gain can be 'rolled over' until the disposal of the new assets.

- Rollover relief benefits traders who reinvest the proceeds from selling business assets in buying replacement business assets. The capital gains on the old assets are calculated in the normal way.

- This procedure can be repeated when these assets are sold until eventually the proceeds are not reinvested or until death. Any rolled-over gains escape CGT entirely on death.

- The new assets can be used in a different business from the old assets.

- Partial relief is available if only part of the proceeds is reinvested. In these circumstances, for every £1 of net proceeds not reinvested, £1 of the gain is chargeable to tax.

- Assets that qualify for rollover relief include:

    - Land and buildings, whether freehold or leasehold, used and occupied by the trader.

    - Fixed plant and machinery.

    - Agricultural and fish quotas.

    - Goodwill.

- Rollover relief is modified where the new assets have a predictable life of less than 60 years. In this situation, the capital gain can only be deferred for up to ten years.

- The new assets must be bought within the period beginning 12 months before and ending 36 months after the sale, although HM Revenue & Customs (HMRC) sometimes allows longer.

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Reinvestment relief

An individual can defer gains on any assets by making a qualifying investment under the enterprise investment scheme (EIS).

- Any size of gain can be deferred.
- The investment must consist of new eligible shares in a qualifying trading company or holding company of a trading group.
- There are many conditions, the main ones being:
  - The shares must be unlisted. Companies on the Alternative Investment Market (AIM) are treated as unlisted.
  - The value of the company's assets must not exceed £7 million before the investment and £8 million immediately afterwards. The assets ceiling is projected to rise to £15 million from 6 April 2012.
  - The company, or its subsidiaries, must carry on a qualifying trade. Many asset-backed and some other trades are excluded.
- Entrepreneurs' relief may be claimed, in which case only the gain after relief is deferred.
- The deferred gain becomes chargeable on a disposal of the EIS shares.
- Unlike rollover relief, it is only necessary to reinvest the amount of the gain (reduced by entrepreneurs' relief if claimed) and not the full net sale proceeds. A restricted amount of relief can be claimed so that, for example, the individual can also set the annual exemption against the gain.
- The reinvestment must normally be made in the period starting 12 months before and ending 36 months after the disposal giving rise to the gain.

Other points

- Under self-assessment, individuals must notify chargeability to CGT by 5 October following the tax year end if they have gains but have not been issued with a tax return. If this is not done, there is a potential liability to interest and penalties if the full amount of tax is not paid by the following 31 January.
- Where the transaction is at 'arm's length', there are no special tax rules on how an overall price for the business should be split between the various assets.
- Normally any split agreed between buyer and seller can be used for CGT purposes.

Income tax

Anyone who buys or sells a business must also consider the various income tax consequences.

Basis of assessment for income tax

There are special rules for calculating the taxable profits when an individual or partnership starts carrying on a business.

- The first year's income tax assessment is based on the profits for the period from the start of business to the next 5 April.
- The basis of assessment for the second tax year depends upon the accounting date adopted. In practice, the basis period for year two is normally either:
  - The 12 months to the accounting date in year two, *or*
  - The first 12 months from the start of the business.

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- In year three and subsequent years, the period assessed is normally the 12-month accounting period ending in that tax year.
- Under these rules, profits may be subject to tax twice, in which case such profits are eligible for ‘overlap’ relief.
- When a sole trader or partnership sells a business, they are taxed on the same basis as if the business had ceased to trade.
- The final year’s assessment is for the tax year in which the sale occurs.
- The assessment is based on the profit for the period beginning immediately after the end of the basis period for the preceding year and ending on the date of cessation.
- If any overlap relief is available, it is deducted from the final period’s taxable profits.

Losses

- The seller might be entitled to terminal loss relief if the business has made a loss before being sold. Losses relating to the final 12 months of trading can be set against profits in the three years before the final year of assessment, relieving the most recent year first. Any losses that remain unused are lost and cannot be transferred to the buyer.
- If the business is a new venture for the buyer (rather than an addition to an existing business), any losses made in the first four years of assessment can be offset against other income in the previous three years. Alternatively, they can be carried forward against future trading profits.
- Another option for both buyers and sellers is to set losses arising in a particular year of assessment against total income of that year. Any excess is available to set against capital gains (subject to detailed rules). This relief extends to the year before the one in which the loss arises, even if, in the case of the buyer, the business was not owned in the earlier year.

Capital allowances – plant and machinery

‘Plant and machinery’ includes fixtures and fittings, motor vehicles owned or bought under hire purchase, and any assets kept for use in the trade.

- Where a trader has claimed capital allowances on assets used in the business, the agreed prices received on a sale of those assets should be brought into the capital allowances computation. The net proceeds on the sale of plant and machinery are compared with the expenditure on those items that has not yet been allowed for tax purposes.
    - ➢ If the proceeds are greater, the difference (a ‘balancing charge’) is added to the taxable profits in the period of sale.
    - ➢ If the proceeds are less, then the difference (a ‘balancing allowance’) is deducted from the taxable profits.
    - ➢ If an asset is sold for more than its cost, only the cost is brought into the capital allowances calculation. Any excess may be taxable as a capital gain.
- HMRC normally accepts whatever prices are agreed between UK traders, and this provides some scope for tax planning for both parties.
- The buyer is entitled to claim capital allowances on the full expenditure on these assets.

Capital allowances – industrial buildings

The sale of an industrial building after 20 March 2007 does not give rise to a balancing charge or allowance, provided the purchase did not benefit from the special 100% capital allowance for enterprise zone property.

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Buyers of industrial buildings are no longer entitled to any industrial buildings allowance.

Stock

The price agreed for stock and work-in-progress at the date of sale is included in 'sales' in the final accounts of the seller. It is taxed at that point, as long as the buyer is (or will be) a UK trader. Otherwise, the amount brought into the sales figure for tax purposes is the market value of the stock.

The buyer can claim the cost in 'purchases' in the first year. The price of the stock should therefore be negotiated bearing this in mind.

Stamp duty land tax (SDLT) and stamp duty

A buyer of property is liable to stamp duty land tax (SDLT) normally on the consideration paid. The buyer must complete a property transaction return and pay the duty within 30 days of the transaction.

- The rates of SDLT on transactions in non-residential property are given in the following table:

Consideration	%
Up to £150,000 and annual rent under £1,000	0
Up to £150,000 and annual rent is £1,000 or more	1
More than £150,000 but not more than £250,000	1
More than £250,000 but not more than £500,000	3
More than £500,000	4

- There are some differences in the rates for residential property.
- Stamp duty is charged at 0.5% on the transfer of shares and marketable securities. The duty is payable by the buyer.
- There is no stamp duty on transfers of other assets.

Value added tax (VAT)

VAT is normally payable on taxable supplies made by a VAT-registered business, and this includes the transfer of most assets on the sale of the business. Assets such as cash, debtors and investments are not normally liable to VAT.

- No VAT is payable on the sale of a going concern. This is a sale where the following conditions are met:
    - ➢ The assets transferred are used by the buyer in the same kind of business as that carried on by the seller.
    - ➢ The business being transferred is capable of separate operation, though the buyer does not actually have to operate it separately.
    - ➢ The buyer is registered for VAT or becomes registered as a consequence of buying the business.
- After the transfer, the seller might be able to deregister.

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- Although it is possible to transfer the VAT registration from seller to buyer if the buyer is not yet registered, the buyer should normally refuse. The transfer passes all the VAT liabilities of the seller to the buyer. It is better for the buyer to register separately.
- Care must be taken if the business assets include land or buildings. If the seller has waived VAT exemption (often referred to as the 'option to tax'), the transfer of the property will be standard-rated rather than exempt, unless the buyer has made a valid election to waive VAT exemption on the building. This is so even where the land forms part of a transfer of a business as a going concern.

Sale for shares

A company buyer has the option of offering shares for a business as well as or instead of cash. There are two main ways in which shares can be offered:

- Route A – the purchasing company may offer shares in exchange for the business.
- Route B – the purchasing company may offer shares in exchange for shares in a company owning the underlying business. Under this route, there are two steps:
  - First, the seller (sole trader or partnership) incorporates a company (Newco) and transfers the business and assets into it (step 1).
  - Second, the seller exchanges the shares in Newco for shares in the acquiring company (step 2).

With both routes A and B, the seller has effectively disposed of the business assets for shares. CGT can therefore arise on the chargeable assets in the same way as if they had been sold for cash.

As far as route A is concerned, that is the end of the story. The seller's gains, based on the market value of those assets that are within the scope of CGT, are taxable, and the buyer's company has acquired the assets at their market value. The seller can claim entrepreneurs' relief subject to the usual conditions.

If route B is used, the seller can defer any gains by using two tax reliefs:

- For the first step, 'incorporation' relief rolls over the gains into the shares in Newco.
- The second step is a 'share-for-share exchange', in which the gains on Newco shares are rolled over into the base cost of the shares in the purchasing company.
- This double rollover ensures that capital gains on the disposal of the business are deferred until the disposal of the shares in the purchasing company.
- However, the deferral is at the expense of any entrepreneurs' relief on the deferred gain, as the purchasing company would not normally qualify as the seller's personal company under the entrepreneurs' relief rules.
- If the shares in the purchasing company are kept until the owner's death, all the gains rolled over will escape CGT.

Incorporation relief

Incorporation relief is automatic (although it is possible to opt out) provided certain conditions are satisfied.

- All the assets of the business, excluding cash if so desired, must be transferred to the company in return for an issue of shares.
- Business liabilities can be transferred. But if the seller becomes entitled to any loan account in the company, they are treated as having received cash rather than shares and therefore that proportion of the gains will not be deferred.

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- The seller is treated as acquiring the shares in Newco at their market value less the net gains (gains less losses) on the assets transferred.
- In effect, the gains have been rolled over into the base cost of the shares.
- Entrepreneurs' relief can reduce any gain that cannot be rolled over (because it arises on cash consideration) but not the rolled-over gain.
- Newco acquires the assets at their market value.
- The transfer of land to Newco in exchange for shares will be chargeable to SDLT.

Share-for-share exchange

Provided that the exchange is for genuine reasons and not for the avoidance of tax, and that there is no significant cash element in the consideration, the share-for-share exchange (step 2 of route B) will be treated as if the new shares replace the old shares. Therefore, no capital gain will arise on the exchange. Gains that were rolled over in step 1 will be deferred until the new shares are sold or otherwise disposed of.

HMRC is aware that share-for-share exchanges are open to abuse and has successfully challenged someone who used a similar transaction and then tried to escape tax by selling the newly acquired securities once he had left the UK and become non-resident. It is normally worth obtaining HMRC clearance in advance for such a transaction.

- In a straight sale, this should normally be a formality. If there was a reorganisation beforehand, obtaining a clearance might be more problematic.
- The seller should make sure that appropriate clearances are obtained, because it is usually the seller who will be liable to any tax if HMRC is not satisfied that the above conditions were satisfied.

Where consideration is a combination of shares and cash, the cash element will normally give rise to an immediate capital gain. Entrepreneurs' relief cannot reduce the gain that is in effect rolled over in the share exchange. Entrepreneurs' relief would be available in respect of any chargeable gain arising from a cash element to the consideration, if the incorporation of Newco took place at least one year before the share exchange.

The buying company will acquire the shares in Newco at the agreed value of the shares issued by it and can deduct that value when those shares are sold if the sale is liable to corporation tax on chargeable gains.

Income tax

- The income tax considerations for a sale for shares are very similar to those for a sale for cash.
- There is a special rule for capital allowances on a transfer of assets from a business to a company in the same ownership (step 1 of route B), under which the seller can elect to transfer the assets to the company at their value as written down for tax purposes. This avoids balancing adjustments.

SDLT and stamp duty

For both routes A and B, the transfer of any land and buildings to either the acquiring company or to Newco is subject to SDLT at the rates previously given. An acquisition of shares attracts stamp duty at a rate of 0.5% of the consideration. For example, an acquisition of land and buildings for £600,000 will result in an SDLT charge of £24,000 (i.e. 4% × £600,000), whereas the acquisition of shares valued at £600,000 will result in a stamp duty charge of £3,000 (i.e. 0.5% × £600,000). If route B is taken, SDLT will be payable on the transfer of property to Newco and stamp duty on the subsequent transfer of shares.

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VAT

The transfer of the business to Newco follows the same treatment as a sale of the business directly to the buyer for cash payment. The seller must therefore arrange the VAT registration of the new company.

- If the seller is still VAT registered after selling the business, the share-for-share exchange (route B) is an exempt supply, and VAT incurred in connection with this transaction cannot be recovered.
- The sale of the shares in Newco does not affect Newco's VAT position.

Loan stock

The purchasing company might offer to pay some or all of the purchase price by way of a loan or loan stock, as an alternative to offering cash or shares. This saves the buyer having to find the cash immediately. The buyer would agree to repay the loan at a specified future date or dates, and the loan is likely to carry interest.

- If an unincorporated business is sold in exchange for loan notes, the loan at its face value is treated as if it were cash consideration in calculating CGT.
- The tax is payable at the normal due date relating to the date of sale, even though the loan might not be repaid for some time. If the loan is never fully repaid, a claim can be made to reduce the tax liability to take account of the amount lost.
- If the business has been incorporated before the sale and the shares in Newco are exchanged for loan notes that are qualifying corporate bonds (QCBs), the gain on the Newco shares is normally deferred until the loan notes are sold or repaid.
- Entrepreneurs' relief would be available on the exchange of Newco shares for QCBs if the incorporation took place at least one year before the share exchange. Only the gain after entrepreneurs' relief would be deferred.
- Any further gain on the loan notes is not taxable, nor is any loss allowable. Most commercial loan notes are QCBs.
- Sometimes the terms of the loan notes can be written in such a way that they are not QCBs. The tax consequences are then similar to those for a share-for-share exchange.
- Sales for loan stock are complex, and there are many pitfalls. Professional advice should always be taken.

Non-tax considerations

- From the seller's point of view, cash is generally preferable to shares or loan stock. Shares can fall in value and loan stock might not be fully repaid.
- Sellers might also find themselves with minority shareholdings that are difficult to sell for a price near to the value of the business that was sold.
- This should not be a problem if the acquirer is a major listed company whose shares are traded regularly.
- In any event, the seller is likely to need a stockbroker's advice about taking the shares, and at what value.
- If the sale is of shares rather than business assets, the seller will almost certainly have to give the buyer a complete range of warranties and indemnities covering all aspects of the business.

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- Buyers should check what they are getting for their money and should employ an accountant to look over the business accounts and a solicitor to look over the purchase agreements.
- The buyer should remember that an unincorporated business rarely has audited accounts, so the results should not be relied on too heavily.

Choosing the best option

The buyer and seller should agree the overall price for the business, and be careful to specify what is, and what is not, included. Then detailed negotiations will decide how the total will be split between the assets and goodwill, bearing in mind the tax consequences of the apportionment. Finally the date of sale should be agreed.

Buying and selling an incorporated business

There are three main ways to buy a business owned by a company. The buyer can:

- Buy the company's business and its assets, see 'Sale of the business' below.
- Buy the shares in the company for cash, see 'Sale of the company' below.
- If the buyer is a company, buy the shares in exchange for an issue of its own shares or loan stock.

The tax consequences are as stated in the separate topic 'Guidelines for buying and selling a business or company' and the separate topic 'Guidelines for buying and selling a business or company', where an unincorporated business is first incorporated and then sold.

Sale of the business

The buyer can buy the business from the company. The company is then the seller.

Capital gains

The seller company is chargeable to tax on capital gains on the sale of each chargeable asset of the business.

- Companies' chargeable gains are calculated in a broadly similar way to gains made by individuals.
- An indexation allowance is given on the costs of assets from the date of purchase to the date of disposal to adjust for the effect of inflation.
- Companies do not qualify for entrepreneurs' relief.
- A company's chargeable gains are included in the profits and charged to corporation tax at whatever rate applies to the company.
- Trading losses in the same accounting period as the sale can be set against chargeable gains.
- Profits and losses on company sales of goodwill and most other intangible assets bought or created after 31 March 2002 are taxed as income rather than as chargeable gains.
- This means there is no indexation allowance, but any losses can be offset against trading profits.
- Sales of goodwill and intangible assets in existence before 1 April 2002 generally continue to be taxed as chargeable gains.

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- Rollover relief can be claimed in the same way as on sales of assets of an unincorporated business, except that goodwill and agricultural quotas bought by a company are not qualifying assets.

- Special rules apply to rollover relief on sales of goodwill that was in existence at 1 April 2002.

Distributing the proceeds

If the gains made by the company are distributed to the shareholders, the shareholders will usually be liable to further tax. This is the main disadvantage for the seller of this type of sale, unless the company purchases another business or has a continuing activity in which the sale proceeds are to be used. There are several ways of extracting the profits from the company that arise from selling the business. They include paying dividends, paying directors' remuneration and liquidation resulting in a capital distribution.

Each route has different consequences, which should be considered when negotiating the sale in order to maximise the after-tax benefits to the owners.

Other taxes

The considerations with regard to capital allowances, stock, SDLT and VAT explained in the separate topic 'Guidelines for buying and selling a business or company' are essentially the same when buying the assets of an incorporated business from a company.

- A company with only one business to sell should continue operating right up to the sale date, particularly if recent results are poor.

- When all trading activity stops in a company, it causes an accounting period to end for tax purposes. The sale of the business would then take place in the next accounting period, and there would be no trading losses in that period to offset the capital gain on the sale.

- Losses of the final period of a trade can be carried back against profits of the previous three years. Any losses that remain unused are lost and cannot be transferred to the buyer.

Sale of the company

A buyer might buy the shares in the company that owns the business, instead of buying the underlying business itself. The seller will often prefer to sell the shares rather than the assets. This avoids a double tax charge on the sale of assets by the company followed by the extraction of the proceeds from the company.

Capital gains

Where a buyer buys the shares in the company, the underlying business remains in the company's ownership, so there is no transfer of the business assets. Instead, the ownership of the company changes.

- The seller's capital gain therefore arises on the sale of the shares. In practice, there might be several shareholders, who must calculate their own gain or loss under the usual rules.

- There is no rollover relief on the sale of shares, but reinvestment relief under the EIS might be available to individual shareholders.

- Entrepreneurs' relief is available on a sale of shares in a trading company, or holding company of a trading group, where for at least one year ending with the sale the seller:

    - Has been a director or employee of the company, or of a company in the same group of companies, and

    - Has owned at least 5% of the ordinary shares, which carry at least 5% of the voting rights.

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- Entrepreneurs' relief is restricted to lifetime gains of up to £10 million. Gains that qualify for entrepreneurs' relief are taxed at 10% instead of the usual 18% or 28%.
- Other conditions for entrepreneurs' relief are similar to those for sole traders and partners.
- Relief can extend to associated sales of assets used by the company that the seller owns personally, subject to conditions.
- If the company is bought from a group of companies, it will be liable to tax at the date of sale on unrealised gains on assets that it acquired by tax-free intra-group transfer within six years before the sale. However, such gains can be reallocated to another company within the group that the company is leaving, on a joint election by both companies.
- A trading company can also roll over the gains against the cost of new assets that qualify under the rollover relief rules.
- No chargeable gain will arise where a trading group sells a trading company in which it has owned at least 10% of the shares for a period of 12 months within the 24 months before the sale, provided both the group and the company sold carry on trading after the sale. There are some additional conditions.
- In some circumstances, the buyer might want only one of several trades carried on by the target company. The company could 'hive down' the target trade into a specially formed subsidiary. Any trade losses may move with the target trade, subject to some restrictions. The buyer can then acquire the shares of the subsidiary. However, the seller would be liable to tax on the sale because it would not have owned the subsidiary for 12 months.

Stamp duty

Stamp duty is payable on share transfers at 0.5% of the sale proceeds. The duty is payable by the buyer.

Corporation tax

A company will normally still be carrying on the same business after a sale of its shares, and so its tax position will generally not change. However, trading losses that arose before the date of sale cannot normally be carried forward if:

- There is a major change in the trade within three years either side of the sale date, and
- The company's trade is small or negligible at the date of sale.

VAT

There is no transfer of the business for VAT because the business remains in the company. Unless the company is part of a group VAT registration, the registration number is retained and any VAT liabilities and potential penalties for making late returns in the past become the responsibility of the new owners.

The buyer must inform HMRC within 21 days if the company's registered office changes as a result of the sale.

If the company being sold is a member of a group and there is a group VAT registration, the group representative member must inform HMRC of the member company's departure from the group. The departing company will have to register for VAT in its own right if its turnover exceeds the registration threshold, unless it is joining the purchasing company's VAT group.

There is no VAT on the share transfer because it is an exempt supply. Any VAT on professional costs associated directly with the share transfer cannot be reclaimed.

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Other considerations

Sellers will often prefer to sell the company rather than its business and assets, unless they want to keep some of the assets, such as a property, but for the buyer the issues are more complex.

- Selling the business leaves the seller with the responsibility for the company's liabilities and the problem of extracting the company profits with the consequent tax costs.
- For buyers, buying the business of a company has the advantage that buyers know what they are getting, because the assets of the business are detailed in the purchase agreement. Because of that, the seller can demand a higher price than if the liabilities of the business are transferred, as is the case if the company itself is bought.
- A company that purchases goodwill is entitled to tax relief based on the amortisation of goodwill shown in the company's accounts, or at a fixed rate of 4% a year on the original cost. This may add to the advantages of a purchase of assets over a purchase of shares, from the buyer's point of view.
- SDLT on a purchase of assets may be higher than stamp duty on a purchase of shares, because of the higher rates of duty.
    - However, a purchase of shares may be liable to higher duty than a purchase of assets, where the main value of the shares lies in the company's earnings potential, and the company does not own land and buildings with a high value.
- If the buyer is a company, it can avoid having to find the cash if it can issue shares to the seller instead.
    - The seller of a company generally prefers to receive cash to shares, despite the immediate CGT liability. Shares can fall in value. Occasionally sellers might prefer shares, if they have a lot of confidence in the prospects of the purchasing company.
    - Entrepreneurs' relief is unlikely to be available on a later sale of shares in the purchasing company. Sellers could also find themselves with minority shareholdings in the purchasing company, which they might find difficult to sell for a price near to the value of the business that was sold. This should not be a problem if the acquirer is a major quoted company whose shares are traded regularly. In any event, the seller is likely to need a stockbroker's advice about taking the shares, and at what value.
- When buying a company, buyers should check what they are getting for their money and should employ an accountant to look over the company's accounts and a solicitor to look over the purchase agreements.
    - Companies with a turnover of no more than £6.5 million and total assets of no more than £3.26 million are not required to have audited accounts, and the buyer should not rely too heavily on the results.
    - Even where the accounts are audited, a buyer is well advised to ask an accountant to undertake an investigation of the company.
    - This is important, because the assets and liabilities of the company may not be detailed in the purchase agreement, and the investigation will provide the only verification of what the buyer is getting.
    - Where verification of some aspects is not possible, those points should be covered in the purchase agreements.
- A person buying a company buys it with all its actual and potential liabilities.

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- For this reason, buyers of companies should obtain a wide range of warranties and indemnities from the seller.
- Sellers will naturally want to limit their exposure to any liabilities of the company that might arise after the sale.
- Precisely what warranties and indemnities are given will form an important part of the negotiations for any company sale.

Tax planning key points

- Buying or selling a business is a key financial decision, and there are often a multitude of different routes available. The many choices that can be made mean that there is plenty of scope for both arranging a good commercial deal and also mitigating the tax liabilities that will inevitably arise. It is, however, fraught with pitfalls, both commercial and tax-related, and specific professional advice is crucial.
- The decision is often about whether it should be an asset (business) or an entity (share) transaction. Asset transactions require much less in the way of due diligence but often bear a larger direct cost (e.g. CGT, VAT or SDLT). Share transactions, however, often give rise to hidden charges, e.g. clawbacks of reliefs on the change of ownership.
- Special care should be taken over the tax consequences of earn-out deals, where deferred consideration is payable dependent on the company's future results. The complexities of such sales are beyond the scope of this topic.

This guide is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking action on the basis of the contents of this publication. The guide represents our understanding of the law and HM Revenue & Customs practice as at September 2011, which are subject to change.