



CORPORATE · GUIDE

Buying or selling a business: asset deal vs. share deal

The basic structures, who carries which liabilities, and why buyers and sellers usually want opposite things.

Posted Aug 28, 2025 · Updated Jul 7, 2026

When a business changes hands, there are two fundamentally different ways to structure the deal: the buyer buys the assets of the business, or the buyer buys the shares of the company that owns the business. It sounds like a technicality. It is not. The choice decides who ends up holding the business's past liabilities, and it usually has significant tax consequences, which is why buyers and sellers typically start out wanting opposite structures. Understanding the difference is essential before you negotiate either side.

The two structures

Share deal. The buyer buys the shares of the corporation that runs the business. The corporation itself does not change. It keeps its name, its contracts, its assets, its employees, and its history. Only the ownership of the corporation changes hands. The buyer steps into the shoes of the previous shareholders and inherits the company exactly as it is, warts and all.

Asset deal. The buyer buys specific assets out of the business, for example the equipment, inventory, customer lists, goodwill, and so on, and usually leaves the old corporation behind as an empty shell. The buyer picks what they are buying, and generally chooses what liabilities, if any, they are willing to take on. The seller keeps the old corporation and whatever is left in it.

The heart of the matter: who carries the liabilities

This is the single most important difference.

In a share deal, the buyer inherits everything, including liabilities they may not even know about. Because the corporation continues unchanged, all of its history comes along: past tax exposure, past contracts, past lawsuits, past employee obligations, problems nobody has discovered yet. If a tax reassessment or a lawsuit shows up two years later relating to something that happened before closing, it lands on the corporation the buyer now owns. This is why buyers do heavy due diligence on share deals and demand strong representations, warranties, and indemnities from the seller to protect against hidden problems.

In an asset deal, the buyer generally takes the assets and leaves the liabilities behind in the old corporation. The buyer can cherry-pick the good parts and avoid inheriting the company's history. This is much safer for a buyer worried about unknown liabilities. There are exceptions, some obligations can follow the assets or the business, particularly around employees and certain statutory matters, so "asset deal" does not mean "zero liability," but the buyer has far more control over what they take on.

So, on liability alone, buyers usually prefer asset deals and sellers usually prefer share deals.

The tax tension

The other big driver is tax, and it usually pulls in the opposite direction from liability, which is what makes these negotiations interesting.

Sellers often prefer a share deal for tax reasons. Selling shares can offer tax advantages to the seller, and in some cases a lifetime capital gains exemption may be available on the sale of qualifying small business corporation shares, which can be very valuable. That is a powerful incentive for sellers to push for a share sale.

Buyers often prefer an asset deal for tax reasons too, because buying assets can give the buyer a better tax position going forward, for example through the ability to claim depreciation on the assets at their purchase cost.

The tax analysis here is genuinely complex and depends on the specific business, the parties, and current tax law. This is firmly accountant and tax advisor territory, and the tax outcome often drives the whole structure, so both sides should get tax advice early, before they are committed to a structure.

Why buyers and sellers want opposite things

Put the two factors together and you can see the natural tension:

- The seller usually wants a share deal: it cleanly transfers the whole company including its liabilities to the buyer, and it can deliver better tax treatment, possibly including the capital gains exemption.
- The buyer usually wants an asset deal: it lets them avoid inheriting unknown liabilities and can give them a better tax position going forward.

Neither is "right." Which structure a deal ends up using comes out of this negotiation, the relative bargaining power of the parties, the specific tax advice each side gets, and how the price and protections are adjusted to make one structure acceptable to both. Sometimes a seller will accept an asset deal for a higher price, or a buyer will accept a share deal in exchange for strong indemnities and a holdback. The structure and the price are connected.

What this means for you

- Decide the structure early, with advice. Because liability and tax both turn on it, the asset-versus-share question should be worked out at the start, with your lawyer and your accountant, not left to the end.
- If you are buying, take due diligence seriously, especially on a share deal where you inherit the company's history. What you fail to find, you may end up owning.
- If you are selling, get your tax advice up front. The availability of favourable tax treatment can significantly affect what structure and price make sense for you.
- Expect the negotiation to trade structure against price and protection. These pieces move together.

Bottom line

A share deal transfers the whole company, history and liabilities included, and often suits the seller, partly for tax reasons. An asset deal lets the buyer take the good parts and leave the liabilities behind, and often suits the buyer, also partly for tax reasons. That opposition is exactly why structuring a business sale is a negotiation, not a formality. Get both legal and tax advice before you commit to a structure, because it shapes everything that follows. Talk to us, and your accountant, early if you are buying or selling a business.

If the business you are buying or selling owns its real estate, how that property is held, sometimes in a separate holding company, interacts with this decision. Our guide on buying commercial real estate through a holding company covers when that structure helps and when it does not.

This is general information about business purchases and sales in Ontario, not legal or tax advice for your transaction. The right structure depends on the specific business, the parties, and current tax law. Talk to us, and your accountant, before you commit.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

The information on this website is provided for general informational purposes only and is not legal advice. Viewing this site or contacting Luciano Legal does not create a solicitor-client relationship; that relationship begins only when we agree in writing to act for you. The lawyers at Luciano Legal are licensed by the Law Society of Ontario.

The current version of this guide is at lucianolegal.com/resources/articles/asset-vs-share-deal.html.