# Share Sales vs Asset Sales

## What is the difference?

With a Share Sale, the transaction is between the buyer and you, as the shareholder of your limited company. The buyer takes ownership of your limited company and makes payment to your personal account, not to the company bank account.

With an Asset Sale, the assets of the company transfer to the new owner. All the liabilities of the business are retained in the limited company, which you will still own. The deal is between the buyer and your limited company (not you), as the buyer is buying assets from the company. The money will be paid into the company's bank account. You can then use the money in the company bank account to clear the liabilities (pay them off) and apply to Companies House for a striking off (a closure of the company).

A simple analogy is to imagine your business as a box, with all assets such as Clients, employees, premises lease etc. as the contents of the box. With a Share Sale you sell the box itself, complete with its contents (staff, clients, regulatory rating . With an Asset Sale you sell only the contents.

## Some considerations for each option are listed below:

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| Regulatory inspection history | Share Sale: Your regulatory registration belongs to the limited company; not the nominated individual, so the buyer can only trade under that registration if they complete a share sale to purchase the limited company. An excellent regulatory rating (Outstanding rating equivalent) could add considerable value to your business.  For the same reasons, a poor inspection result will reduce the value of the business due to potential damage to brand reputation. In these circumstances, an Asset Sale is advised. |
| Asset Sale: The buyer will need to apply for regulatory registration for their own limited company. This adds time and cost to the process, and in their eyes, possibly an element of risk.  However, if the business has a poor inspection history, a new registration allows for a clean start. |
| Limited company liabilities | Share Sale: Your buyer will inherit all assets and liabilities within the business. This is riskier than an Asset Sale, as there may be undeclared financial liabilities relating to tax, National Insurance, debts to suppliers etc. There may also be legal liabilities e.g. complaints against the business from employees or Clients.  The risks can be mitigated by a series of legal covenants and warranties designed to protect the buyer. It is not unusual for the proceeds of a Share Sale to be paid in instalments, with a final payment due 12 months after completion, minus any liabilities that have been incurred. |
| Asset Sale: The buyer will create a new limited company, and therefore inherit no legal or financial liabilities from the seller. This is less risky for the buyer, but it does mean they will have to go through the process of regulatory registration, before they can start servicing the book of business they have bought. |
| Employees | Share Sale: There will be no change to employees as the contracts are between the employee and the limited company. |
| Asset Sale: The buyer can include your employees among the business assets. Their contracts will be transferred to the new limited company and are protected by the Transfer of Undertakings (Protection of Employment) Regulations, 1981 (TUPE) process. |
| Clients | Share Sale: There will be no change to Client contracts as they are between the Client and the limited company. The buyer will take responsibility for delivering services upon completion of the sale. |
| Asset Sale: Clients will need to sign a new contract; the transfer of contracts can only take place once the buyer has received regulatory registration. |

## Other Share Sale pros and cons

For the seller:

* Tax advantages: The seller can usually take advantage of Entrepreneurs' Relief (and CGT allowance and other tax breaks) to remove all or part of the tax liability they would otherwise have. You should take advice on this from a professional advisor.
* A clean break: The seller passes over everything, so they do not have the responsibility of winding up the limited company or dealing with outstanding liabilities after the sale.
* Share sales typically take longer to complete: Due to the increased risk, the buyer will probably want to examine everything very carefully. The buyer's advisors should insist on various protections and will want the seller to provide warranties, guarantees and indemnities to limit their Client's risk. Negotiating over these terms can drag out the transaction and increase the risk of it collapsing.
* Higher cost: Share sales often incur higher professional fees as they require greater input from lawyers and accountants. Lawyers are needed to negotiate the terms of any warranties, guarantees, indemnities and covenants included to protect and reassure the buyer. A ‘fixed fee’ arrangement is therefore preferable to an hourly rate.
* Assets: there may be some assets in the business that you want to keep. These will need to be removed from the company prior to sale.
* Personal guarantees: If you have signed personal guarantees, e.g. on bank lending, these are not generally transferred to the new owner. You will need to clear debts and extricate yourself from personal liability prior to selling.

For the buyer:

* A share sale can deliver a seamless takeover: relationships with Clients, employees, suppliers etc. transfer over with no need for renegotiation and no break to the business.
* Increased risk: the buyer will be taking on business liabilities and these may not be immediately apparent for example, if a personal injury claim is made after the sale but relates to an incident that occurred prior to the sale, the liability falls fully onto the new owner.
* Increased cost: as with the seller, the buyer also faces higher professional fees for their due diligence.
* Stamp Duty: the buyer will need to pay Stamp Duty on the purchase.

## Asset Sale pros and cons

For the seller:

* Assets: selling assets gives the seller greater negotiating power than selling shares because buyers prefer to buy assets, and the seller has the responsibility of clearing liabilities and other ‘tidying-up’ tasks post-sale.
* Quicker: there is less due diligence for the buyer to perform and the transaction can therefore be completed more quickly and with less chance of the sale falling through in the due diligence stage.
* Choice: the seller can choose which assets are sold and which are retained in the business.
* Third party approval requirements can sometimes cause issues: for example, landlords’ lawyers can request deposits or personal guarantees, and impose rent increases when transferring the lease to a new owner. They can also be slow and unresponsive as there is nothing for them to gain by prioritising the work.

For the buyer:

* Due diligence: this is easier, quicker, and less costly as the buyer is not inheriting liabilities from the business.
* The buyer may need to renegotiate fees, deals and arrangements with suppliers, banks etc. as these do not automatically transfer over with the assets. This is less of a concern in a franchise, where such cost savings are often negotiated at network level.

Factors that may impact your decision may include, but are not restricted to:

1. Does your business have significant liabilities?
2. Does your inspection history add value to the business?
3. Are there any assets within the business that you want to keep?

There will also be personal tax implications to consider. **We recommend that you discuss your options with RaH UK and take advice from your accountant or financial advisor, to help you to decide whether a Share Sale or Asset Sale is the better option for you.**

# Version Control

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