

Share Sale FAQ: Selling your business?

Is it better to sell the shares in a company or the assets of a company?

If your business is incorporated, you can sell the corporate shares of your business. Once you sell the shares, the Buyer automatically gains control of the business and all of its assets.

- ▶ Selling shares is a simple transaction, especially when compared to an asset sale. In a share sale, the contracts, employees work in progress, and even the bank accounts continue as there is generally only a change of control of the ownership of the shares of the company. Some contracts, such as a property lease, have a change of control provision that needs approval, but for the most part, the business continues as before.
- ▶ Eligible shares might qualify for a lifetime capital gains exemption, which means you do not pay any tax on capital gains up to that amount. That number is indexed to inflation and increases every year (if you sell shares of a qualifying Canadian business in 2021, the lifetime capital gains exemption is \$892,218). To qualify, you will need to meet certain conditions. Share sale proceeds that do not qualify for the lifetime capital gains exemption are treated as capital gains, of which 50% are tax exempt.
- ▶ Small businesses are generally sold excluding long-term debt. In some instances, all the liabilities and debts are sold with the business.

Buyers often prefer asset sales to avoid inheriting potential liability by acquiring the company through a share sale. They may want to avoid potential disputes such as contract claims, product warranty disputes, product liability claims, employment-related lawsuits, and other possible claims.

These potential claims can be mitigated or eliminated by having a lawyer draft a Share Purchase Agreement where the Seller is responsible for all claims pre-closing. There is usually a cash hold-back or set-offs against Vendor financing.

In the end, whether the sale of a business transpires by way of a share sale or asset sale may depend on the structure of the company and the Buyer's wants and needs. The price for the assets may not always equal the price for the company's shares. An analysis of the Seller's tax benefits and liabilities passed through to the Buyer will determine what works for both parties. A qualified business broker, accountant and lawyer can explain and investigate the structure and process.



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Alf has over forty years of industry experience, building and operating businesses, taking companies public and assisting firms in coordinating and selling their businesses. Contact Alf with your questions regarding the disposition of your business.