



PURCHASE OR SALE OF A BUSINESS

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Are you in the market of selling your incorporated business or purchasing one? Quite often, entrepreneurs who are beginning to start up their incorporated business would either acquire an existing business or purchase only the assets. As you will see, each party will have conflicting interests and the determination of a reasonable sale price will depend upon the method selected.

When a purchaser is acquiring the shares of the business, he or she is acquiring the entire entity. The purchaser should be fully aware of any pending legal and tax problems or any outstanding liabilities because these issues will become the purchaser's responsibility. As an alternative, the purchaser may consider acquiring only the assets of the business. Under this scenario, the purchase price is simply allocated among the assets being acquired according to the agreement. Despite some assets being subject to GST & PST, purchasers will generally choose this method for the following reasons: a) the corporation's tax and liability problems are avoided, b) ability to select certain assets, c) goodwill can be amortized, d) capital cost allowance is amortized according to fair market value and e) easier financing. Since certain capital assets are depreciable, the purchaser will prefer to allocate a maximum amount of the purchase price to these assets.

From the vendor's perspective, he or she will prefer to sell the entire business especially if the corporation qualifies as a Canadian Controlled Private Corporation (CCPC). Individuals (except a trust or corporation) are entitled to a lifetime capital gains deduction (CGD) of \$ 500,000 which would be utilized to offset any capital gain arising from the disposition of small business shares or farm property. When the shares are sold, taxes will be payable on the taxable capital gain realized. If the transaction is an asset sale, this CGD is not available and the disposition of assets may result in capital gains and recapture of capital cost allowance depending on the type of asset sold; both which are included in income and which may result in a tax liability. Since there are possibilities of recapture on depreciable property, the vendor will prefer to allocate a minimal amount of the consideration to these assets.

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