





due diligence | action checklist

Buying a business is a major decision. The purchase of a business can be done either through an asset sale, or the purchasing of shares in a company or interests in a trust. Regardless of the choice, it is important to ensure that a due diligence report into the business to be purchased has been conducted. The checklist below highlights common areas that must be considered when buying a business. The information gathered should be discussed with your professional adviser.

Item	Yes	No
Financial health		
1	Have you obtained the last four years financial statements of the business?	
2	Have schedules of the following been obtained, where applicable: liabilities (including contingent liabilities), inventory, and accounts receivable and payable?	
3	Have you obtained an up-to-date copy of the business's credit report, if available?	
4	Has a comparison between the business's gross profits with the industry trends been done?	
Taxation considerations		
5	Have you obtained the last four years tax returns of the business?	
6	Have you obtained confirmation that all taxes such as income tax, GST, PAYG withholding and payroll tax are up to date?	
7	Have you familiarised yourself with the tax obligations of the entity to be purchased? <i>TIP: Where the business is conducted through a company, consideration must be given to the duties of a director under the tax law.</i>	
8	Have you considered the stamp duty implications on the purchase of the business?	
9	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST free?	
	Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business.	
	Where a business is sold through the sale of units or shares, it will not qualify for as a supply of going concern, ie the purchase of the units or shares will be an input taxed financial supply.	
If you are buying a business through an asset sale		
10	Has an asset register been obtained detailing all the assets being sold? <i>TIP: The register should detail the following information about the assets: the original purchase price, the purchase date, the depreciation rate used, the effective life of the asset, and the written down value.</i>	
11	Have you checked the ownership and condition of the assets being sold?	
12	Where the assets are leased by the business, have you obtained copies of the leases? <i>TIP: If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.</i>	
13	Are the assets adequately insured until settlement of the purchase?	
14	Has the purchase price been apportioned across the assets being purchased?	
	If the purchase contract for an asset sale includes the purchase of the business's trade debtors, you will not be able to claim an income tax deduction for bad debts.	

Item		Yes	No
If you are buying a business through a sale of units or shares			
15	Have you obtained a listing of all current shareholders or unit holders?		
16	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?		
17	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?		
<p>The existence of a FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived.</p> <p> Generally, a trust will be denied a tax deduction for carried forward losses or bad debts provided certain tests are passed. Similarly, where the substantial shareholder of a company changes, the company can be denied a tax deduction for carried forward losses or bad debts provided the same business test is satisfied.</p>			
Employees obligations			
18	Have you obtained a list of employees including their salary and entitlements?		
19	Have all outstanding employees' entitlements such as superannuation guarantee and annual leave been accounted for?		
20	Are the WorkCover premiums up to date?		
<p> Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. However, where a business is sold through the sale of units or shares, there will be a continuity of employment and the buyer is responsible for any employees liabilities accrued.</p>			
Trading stock			
21	Does the trading stock include any obsolete stock?		
22	Has the trading stock been valued at market value? <i>TIP: Where the purchase of the business includes trading stock, the trading stock must be valued at market value on the day of disposal, which is normally the date of the purchase contract.</i>		
Business premises			
22	Have you sighted copies of all real estate leases, deeds, mortgages, and any relevant documents to the premises?		
23	If there are improvements to the business premises, has a register been obtained detailing the improvements? <i>TIP: The register should detail the following information: the cost of the improvements and date of construction or acquisition.</i>		
Where the business is conducted through a company			
24	Has a company search been done to verify the vendor?		
25	Are all ASIC requirements up to date?		
Other considerations			
26	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up to date?		
27	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs? <i>TIP: The structure of the business will determine your legal obligations. Factors that should be taken into account when considering whether the structure of the business is suitable for your needs includes asset protection and succession planning.</i>		
28	Have you searched the local council and other government agencies records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?		
29	If a restrictive covenant, earn-out clause or claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?		

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.