

PURCHASE OF SHARES MEMORANDUM TO CLIENT

GENERAL

In a share purchase transaction the Purchaser is buying only the shares of the corporation and thus acquires control of the company, which in turn owns other properties and assets. This is to be distinguished from the purchase of assets transaction where the Purchaser is buying simply the assets owned by the corporation. Important tax and other distinctions follow from this and before concluding an agreement the question should be carefully reviewed with me as to which is a more appropriate kind of a transaction.

The most important point to remember in a share purchase transaction is that you are assuming both the assets and the liabilities of the corporation.

FINANCIAL STATEMENTS

In a share purchase the company continues its financial statement including its assets and liabilities and it is accordingly very desirable that the Vendor in the Sale Agreement represent to the Purchaser the financial position by way of attaching the last two or three years statements to the agreement. The Purchaser should have his accountant evaluate the financial statements for his comments. The accountant's advice should also be sought on the tax considerations.

TAX CONSIDERATIONS

In a share purchase the shares are a capital asset and the purchase price forms a cost base for future sale or disposition of the shares. If in future the shares are sold at a higher price half the difference between the cost price and the sale price is taxable as capital gains in the hands of the Vendor/Shareholder in his income tax return in the year of sale.

Ontario charges retail sales tax on the sale of assets in the amount of 7% of the value. The tax can be levied only in the movable property called chattels of the business. In a share purchase transaction this tax is not payable as the Company continues to own the same assets.

SEARCHES

When shares of a company are being purchased I will be conducting for the client numerous searches including a search under The Corporations Securities Registration Act for debentures registered, Section 88 search under The Bank Act to determine if any registrations have been made for the assignment of the company's securities, Personal Property Security Act search which will determine liens against the assets, executions against the

Company, bankruptcy search to determine if an assignment has been made in bankruptcy by the corporation and numerous other searches. Where the corporation owns real estate further searches will be required to determine that the real property has a clear title. In some cases it may be desirable to check out the Municipal regulations to determine if the business is carried on properly in the area, which is zoned for that purpose.

CLOSING

The usual procedure on the closing is that the Vendor and the Purchaser's solicitor will get together and exchange the documents and resolutions will be passed in the books of the company to appoint the Purchaser as the director and for the transfer of shares to him.

FEES

My fees on Purchase transaction will be based on the time spent and it is very desirable that the fee is not fixed by a rigid amount. If the amount is rigidly fixed and problems develop it becomes very difficult to give that matter a priority. If the client assists in the gathering of information, considerable time can be saved and this will be a saving of fees to you.

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