

Due Diligence: Action Checklist

Buying a business requires careful consideration of various choices. A business can be purchased either through purchasing the business's assets or through purchasing the shares in the company or interests in the trust.

It is important to ensure that a thorough due diligence review has been conducted before a decision to buy is made. The review should find out as much information about the business as possible, which you can then discuss with your adviser. You should also consider how embarking on a business venture would fit with your personal circumstances.

This checklist highlights common areas that must be considered when buying a business.

Item		Yes	No
Where the business is conducted through a company			
1	Has a company search been done to verify the vendor?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are all ASIC compliance requirements up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the company have any overseas operations?	<input type="checkbox"/>	<input type="checkbox"/>
Financial health			
4	Have you obtained the last four years financial statements of the business?	<input type="checkbox"/>	<input type="checkbox"/>
<div style="border: 1px solid black; padding: 5px;"> <p>TIP: The financial statements should contain a breakdown of:</p> <ul style="list-style-type: none"> ● liabilities (including contingent liabilities); ● inventory; and ● accounts receivable and payable. </div>			
5	Have you obtained information on the business's capital structure and, where possible, obtained a current list of vested interests (such as shares, options, warrants, etc) and outstanding debt instruments?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have you obtained an up-to-date copy of the business's credit report, if available?	<input type="checkbox"/>	<input type="checkbox"/>
7	Has a comparison between the business's gross profits and the industry trends been done?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you considered the financial projections and major growth drivers of the business in the next four years?	<input type="checkbox"/>	<input type="checkbox"/>
Taxation considerations			
9	Have you obtained the last four years tax returns, including supporting schedules and workpapers of the business, such as Capital Allowance schedules, Business Activity Statements, Fringe Benefits Tax returns, etc?	<input type="checkbox"/>	<input type="checkbox"/>
10	Have you obtained confirmation that all tax obligations such as income tax, GST, PAYG withholding, stamp duty and payroll tax are up-to-date and paid?	<input type="checkbox"/>	<input type="checkbox"/>
11	Have you familiarised yourself with the tax obligations of the entity to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>
<div style="border: 1px solid black; padding: 5px;"> <p>TIP: If the business is conducted through a company, consideration must be given to the duties of a director under the tax law.</p> </div>			
12	Have you reviewed all correspondence with the Tax Office as to whether the business has any private tax rulings, tax elections, amended notices of assessment, etc, that may apply?	<input type="checkbox"/>	<input type="checkbox"/>
13	Are you aware if the business is currently being audited by the Tax Office or has been audited in the last four years and, if so, what its outcome was?	<input type="checkbox"/>	<input type="checkbox"/>
14	Have you considered the stamp duty implications on the purchase of the business?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
15	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST-free?	<input type="checkbox"/>	<input type="checkbox"/>

ALERT:

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 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

16	Has a fixed asset register been obtained detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
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TIP: The register should detail the following information about the assets:

- the original purchase price;
- the purchase date;
- the depreciation method used;
- the depreciation rate used;
- the effective life of the asset; and
- the written down value.

17	Have you checked the ownership and condition of the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
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18	Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
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TIP: If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.

19	Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
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20	Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
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ALERT:

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.

If you are buying a business through a sale of units or shares

21	Have you obtained a listing of all current shareholders or unit holders?	<input type="checkbox"/>	<input type="checkbox"/>
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22	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	<input type="checkbox"/>	<input type="checkbox"/>
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23	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?	<input type="checkbox"/>	<input type="checkbox"/>
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ALERT:

The existence of an FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived.

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.

Employee obligations

24	Have you obtained a list of the employees, including their salary and other entitlements?	<input type="checkbox"/>	<input type="checkbox"/>
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25	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, standard of conduct, etc?	<input type="checkbox"/>	<input type="checkbox"/>
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Item		Yes	No
26	Have all outstanding employee entitlements, such as superannuation guarantee and annual leave, been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
27	Are the WorkCover premiums up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
28	Are you comfortable with the current business culture, the level of staff relations and turnover over the last four years?	<input type="checkbox"/>	<input type="checkbox"/>

ALERT:

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 employee liabilities accrued.

Trading stock

29	Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
30	Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>

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.

Business premises

31	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any relevant documents to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
32	If the same business premises are to continue, has the vendor facilitated a lease assignment and all documents signed by you?	<input type="checkbox"/>	<input type="checkbox"/>
33	If there are improvements to the business premises, has a register been obtained detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>

TIP: The register should detail the following information:

- the cost of the improvements; and
- date of construction or acquisition.

Other considerations

34	If you are acquiring the business with other people, do you have the necessary agreements in place?	<input type="checkbox"/>	<input type="checkbox"/>
35	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
36	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	<input type="checkbox"/>	<input type="checkbox"/>
37	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	<input type="checkbox"/>	<input type="checkbox"/>

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 include asset protection and succession planning.

38	Have you searched the local council and other government agency records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	<input type="checkbox"/>	<input type="checkbox"/>
39	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?	<input type="checkbox"/>	<input type="checkbox"/>
40	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	<input type="checkbox"/>	<input type="checkbox"/>
41	Have you examined current production, distribution, sales and marketing strategies of the business and the likely impact of a change of ownership?	<input type="checkbox"/>	<input type="checkbox"/>