

DEALWISE ADVISORY

Deal Structure

Decision Tree Framework

How to choose the right deal structure — and why it changes everything

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About this framework

Deal structure is one of the most consequential decisions in any acquisition. Get it right and you protect yourself commercially and financially. Get it wrong and you can inherit liabilities, overpay, lose tax efficiency, or destroy the relationship with the seller.

This framework gives you a systematic way to work through structure decisions — covering the primary choice between shares and assets, then the second-order decisions about price mechanics, financing, and consideration.

It is not a substitute for qualified legal and tax advice. It is a thinking tool — a way to have better conversations with your advisers and make sure you're asking the right questions before you commit.

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Section 1 — The Fundamental Choice

Share purchase vs asset purchase

Before any other structure decision is made, buyer and seller must agree on one thing: are we buying the company, or are we buying what is inside it?

This is the most consequential decision in deal structure. It affects tax, liability, price, legal complexity, and in some cases whether the deal is possible at all.

Share purchase vs Asset Purchase: What Each Means

| Share Purchase | Asset Purchase |
|---|---|
| You buy the shares of the company | You buy specific assets of the company |
| You acquire everything — assets and liabilities | You choose what assets you want to take |
| All historic liabilities transfer to you as owner | Historic liabilities generally remain with the seller |
| Simpler from a contract and consent perspective | More complex — assets must be individually transferred |
| Preferred by sellers for tax and simplicity reasons | Preferred by buyers who want to control liability exposure |
| SDLT on property within the company; 0.5% stamp duty on shares | SDLT on property at full rates; no stamp duty on other assets |
| Target company retains its contracts, licences, and relationships | Contracts and licences may need to be novated or reassigned |
| Accounts and tax history remain inside the company | Buyer starts with a clean balance sheet for acquired assets |

PRACTICAL REALITY

Sellers almost always prefer a share sale. Buyers often prefer an asset purchase. The deal structure is frequently a negotiation between these two positions. Understanding why each party prefers what they prefer — and where the flex points are — is the mark of a sophisticated dealmaker.

When Each Structure Is Typically Used

| Scenario | Likely Structure | Primary Reason |
|--|------------------|--|
| Clean, well-run SME with strong financials | Share purchase | Seller tax preference; straightforward history |
| Business with known legacy liabilities | Asset purchase | Buyer wants clean exposure; limits inherited risk |
| Regulated business (e.g. FCA authorised) | Share purchase | Licences don't easily transfer; regulatory approval needed |
| Business with valuable property in company | Share purchase | SDLT saving can be significant |
| Distressed or insolvent business | Asset purchase | Administration or liquidation process; no share value |
| Management buyout (MBO) | Share purchase | Management team buying existing ownership structure |
| Acqui-hire (buying talent, not business) | Asset purchase | Only people and IP of value; reject liabilities |
| Carve-out from larger group | Asset purchase | Subsidiary or division not in separate legal entity |
| Overseas buyer / group acquisition | Share purchase | Group consolidation; overseas tax planning |

Section 2 — The Deal Structure Decision Tree

A systematic framework for navigating structure choices

Work through these decision nodes in order. Each node narrows your structural options and builds toward the right combination of deal mechanics for your specific transaction.

Node 1 — Primary Structure

◆ Does the target business sit in a clean, single legal entity with no material undisclosed liabilities?

| | | |
|--------------------------|--|---|
| <i>Decision question</i> | YES → Share purchase (unless tax or other factors override) | NO → Asset purchase or restructure first |
|--------------------------|--|---|

Node 2 — Liability Exposure

◆ Have you completed financial, legal, HR, and tax due diligence with no material red flags?

| | | |
|--------------------------|--|--|
| <i>Decision question</i> | YES → Proceed with agreed structure — manage residual risk via warranties | NO → Renegotiate price or structure, seek indemnities, or walk away |
|--------------------------|--|--|

Node 3 — Pricing Certainty

◆ Is the business's future performance predictable and not heavily dependent on the seller staying?

| | | |
|--------------------------|---|---|
| <i>Decision question</i> | YES → Clean cash at completion — fixed price or locked-box | NO → Consider earn-out, deferred consideration, or retention |
|--------------------------|---|---|

Node 4 — Seller Flexibility

◆ Does the seller need full cash proceeds at completion (e.g. to fund retirement or clear debts)?

| | | |
|--------------------------|---|---|
| <i>Decision question</i> | YES → Structure must be majority cash at completion — limit deferred element | NO → Explore loan notes, equity rollover, or staged payment — potential tax benefit for seller |
|--------------------------|---|---|

Node 5 — Financing

◆ Can you fund the acquisition without debt, or with debt that does not create unacceptable risk?

| | | |
|--------------------------|---|---|
| <i>Decision question</i> | YES → Equity-funded or conservatively leveraged deal | NO → Structure deal to reduce upfront cash — vendor finance, deferred, or acquisition debt with clear servicing capacity |
|--------------------------|---|---|

Node 6 — Seller Involvement Post-Deal

◆ Is the seller essential to the business during a transition period after completion?

| | | |
|--------------------------|---|---|
| <i>Decision question</i> | YES → Negotiate service agreement or consultancy arrangement — tie deferred consideration to transition milestones | NO → Clean break — seller exits at or shortly after completion |
|--------------------------|---|---|

Node 7 — Tax Optimisation

◆ Have you reviewed the tax position of both buyer and seller and structured to optimise for both?

| | | |
|--------------------------|---|--|
| <i>Decision question</i> | YES → Structure confirmed — document rationale and finalise heads of terms | NO → Re-examine structure — tax-inefficient deals leave value on the table for both parties |
|--------------------------|---|--|

Section 3 — Consideration Structures

The different ways price can be paid

Price and payment are not the same thing. A deal can be agreed at £3m but structured so that only £1.5m is paid on day one. Understanding the full menu of consideration structures is fundamental to creative dealmaking.

3.1 — Cash at Completion

The simplest and most common form. Buyer pays an agreed sum on the day of completion in exchange for shares or assets.

| Factor | Buyer perspective | Seller perspective |
|------------------|--|--|
| Certainty | Highest risk — pay before value proven | Ideal — immediate liquidity |
| Price adjustment | Completion accounts or locked-box to protect working capital | Prefer locked-box to lock in value |
| Tax | Neutral — acquisition cost for CGT base | CGT event on receipt — BADR if qualifying |
| Typical use | Clean businesses with strong DD; motivated buyers | Sellers needing cash; retirement or reinvestment |

3.2 — Deferred Consideration

A portion of the price is agreed upfront but paid at a later date — typically 6 to 24 months post-completion — subject to conditions being met or simply by agreement.

KEY POINT

Deferred consideration is not the same as an earn-out. Deferred is a fixed agreed amount payable at a future date. Earn-out is contingent — it depends on future performance. The distinction matters legally and for tax.

| Factor | Buyer perspective | Seller perspective |
|-----------|--|--|
| Certainty | Reduces upfront cash requirement | Residual credit risk on seller |
| Price | Can negotiate slightly higher total price in exchange for deferral | May accept higher headline price for deferral risk |
| Tax | Interest element may be treated as income | CGT crystallises on completion even for deferred amounts |
| Security | Unsecured unless charge or escrow agreed | Should seek personal guarantee or charge over assets |

| | | |
|-------------|---|---|
| Typical use | Where buyer has limited cash; goodwill in deal relationship | Where seller trusts buyer; estate or tax planning reasons |
|-------------|---|---|

3.3 — Earn-Out

Part of the consideration is contingent on the business achieving agreed performance targets post-completion. Typically 1 to 3 years. The earn-out amount is only payable if targets are met.

| Earn-Out Advantage | Earn-Out Risk |
|--|---|
| Bridges valuation gap between buyer and seller | Seller loses control of the business they're being paid for |
| Aligns seller incentive with post-deal performance | Disputes over how targets are measured are very common |
| Reduces buyer's upfront cash outlay | Accounting manipulation can affect reported performance |
| Useful where future performance is genuinely uncertain | Requires detailed, carefully drafted legal provisions |
| Can keep the seller engaged and motivated post-deal | Can create conflicts if buyer changes the business strategy |

EARN-OUT WARNING

Earn-outs generate more post-completion disputes than any other deal structure element. If you are using one, define the metrics with precision. Agree the accounting policies in writing. Specify buyer's obligations to support performance. Do not leave anything to interpretation.

3.4 — Loan Notes

The buyer issues a formal debt instrument to the seller instead of paying cash. The seller holds a loan note — effectively a promissory note — that is repaid over time with interest.

- Often used for tax planning — seller can defer CGT on the loan note element until redemption
- Seller retains an interest in the business through the debt — creates ongoing alignment
- Buyer preserves cash flow — particularly useful in LBO or limited-equity situations
- Must be properly documented — commercial rate interest, redemption schedule, default provisions
- Qualifying Corporate Bonds (QCBs) have specific CGT treatment — specialist tax advice essential

3.5 — Equity Rollover

Rather than receiving full cash proceeds, the seller reinvests a portion of their sale value into the new combined business — retaining a minority stake in the acquiring entity.

| Works well when... | Risks when... |
|--|--|
| Seller wants ongoing upside from the combined business | Seller and buyer have different visions for the business |
| Buyer wants seller's skin in the game post-deal | Governance and shareholder rights not clearly agreed |
| Valuations are aligned on future value creation | Exit route for the seller's minority is unclear |
| Tax reasons make a clean exit unfavourable | Seller's minority becomes effectively illiquid |

Section 4 — Financing the Deal

How buyers fund acquisitions

Most acquisitions are funded through a combination of sources. The financing structure directly affects deal risk, return profile, and what happens when things go wrong.

| Financing Type | Best Suited To | Key Risk |
|---------------------------------|---|--|
| Cash reserves / equity | Asset-light acquisitions; lower-risk targets; patient capital | Opportunity cost of deployed capital |
| Acquisition debt / term loan | Cash-generative businesses with predictable EBITDA | Servicing burden reduces operational headroom |
| SBA / CBILS-style schemes | Smaller deals; first-time buyers; government-backed markets | Conditions, eligibility, covenants |
| Vendor finance | Seller wants deferred payment; buyer has limited cash | Reliance on buyer creditworthiness; seller concentration |
| Private equity / co-investment | Larger deals; platform acquisitions; management buyouts | Governance, equity dilution, exit timeline pressure |
| Asset-backed lending | Businesses with strong balance sheet assets (property, plant) | Asset values can fall; security positions complex |
| Mezzanine finance | Deals requiring more capital than senior debt can support | Expensive — subordinated position, high interest rates |
| Holding company / SPV structure | Group acquisitions; ring-fencing; tax efficiency | Structural complexity; inter-company agreements required |

DEALWISE PRINCIPLE

The best acquisition financing is the one you can comfortably service even if EBITDA falls 20% below your base case. Build your financing model on a stressed scenario, not your optimistic projection.

Section 5 — Tax Considerations by Structure

The tax drivers that shape how deals are built

Tax should not drive the deal structure — but it should absolutely inform it. Significant value can be created or destroyed based on how a transaction is structured from a tax perspective. These are the key areas to understand.

5.1 — For the Seller

| Tax Area | Share Sale | Asset Sale |
|---------------------------------------|---|--|
| Capital gains tax | CGT on proceeds less base cost — individual sellers pay 24% CGT (higher rate) | CGT or income tax depending on asset type |
| BADR (Business Asset Disposal Relief) | 18% CGT on qualifying gains up to £1m lifetime limit — significant saving (from April 2026) | Can apply to assets used in qualifying trade |
| Stamp duty / SDLT | Buyer pays 0.5% stamp duty on shares — absorbed by buyer | Buyer pays SDLT on property at full rates (up to 5%) |
| VAT | No VAT — share sale is outside the scope of VAT | TOGC (Transfer of Going Concern) may apply — seek advice |
| Loan note treatment | QCB loan notes can defer CGT until redemption — useful planning tool | Generally not applicable in asset purchase context |
| Deferred consideration | CGT crystallises at completion — tax due even before cash received | Same — careful structuring needed to manage cash flow |

5.2 — For the Buyer

| Tax Area | Share Purchase | Asset Purchase |
|------------------------|--|---|
| Goodwill | No tax relief on goodwill acquired in a share purchase of associated company | Goodwill amortisation may be allowable — specialist advice |
| Stamp duty | 0.5% on consideration — cost to buyer | SDLT on property; no duty on most other assets |
| Interest deductibility | Acquisition debt interest generally deductible if held in trading entity | Same principle applies — structure debt carefully |
| Capital allowances | No step-up in asset values — inherit seller's tax written-down values | Full reset — buyer claims capital allowances on purchase price |
| Group relief / losses | Target's historic losses become available — may have value | No access to historic company losses — clean start only |
| VAT on deal costs | Professional fees — VAT typically not recoverable | Same — input tax may or may not be recoverable depending on structure |

ALWAYS TAKE TAX ADVICE

This section is a framework for structuring conversations — not tax advice. The tax landscape around M&A is complex, changes regularly, and depends on specific facts. Always involve a qualified tax adviser before committing to any structure.

Section 6 — Risk Allocation in Deal Structure

Warranties, indemnities, retention, and insurance

Deal structure is not just about how you pay — it is also about who bears the risk when something goes wrong. Every material deal has a risk allocation framework built into it. The question is whether you have designed it deliberately or inherited it by default.

6.1 — Warranties

Warranties are statements of fact made by the seller about the business at the point of sale. If a warranty turns out to be false, the buyer can claim for breach of warranty.

- Warranties cover financial, legal, commercial, tax, HR, and operational matters
- They are a form of insurance — they shift risk from buyer to seller
- Sellers will negotiate limitations — de minimis thresholds, aggregate caps, time limits
- Typical cap: 100% of consideration for general warranties; specific caps for tax warranties
- Buyers should never rely on warranties as a substitute for thorough due diligence

6.2 — Indemnities

An indemnity is a specific promise by the seller to reimburse the buyer pound-for-pound for a defined liability. Unlike warranties, there is no need to prove loss — if the trigger event occurs, payment is due.

- Used where a specific risk is identified — a known tax issue, a pending claim, an environmental liability
- Much stronger protection than a warranty — generally uncapped or higher-capped
- Sellers resist wide indemnities — negotiate hard on scope and trigger
- Can be used creatively to keep a deal alive when a red flag is found — indemnify the risk rather than reducing the price

6.3 — Retention and Escrow

A portion of the consideration is withheld at completion and held by solicitors (escrow) or retained by the buyer for an agreed period. Released if no claims arise within the warranty period.

| Approach | How It Works |
|--------------------|---|
| Buyer retention | Buyer holds back a percentage of price — typically 5–15% — for 12 to 18 months |
| Escrow account | Funds held by neutral third party (solicitors) — released on agreed conditions |
| Staged completion | Payment split across agreed milestones post-completion |
| Personal guarantee | Seller provides personal guarantee against warranty claims — useful where company is wound up post-sale |

6.4 — Warranty & Indemnity Insurance (W&I)

W&I insurance is a policy that pays out to the buyer (or seller) if a warranty claim is made and the counterparty cannot satisfy it. It has become standard in mid-market deals.

- Allows the seller to receive clean proceeds without a retained liability for warranty claims
- Buyer gets protection against seller insolvency or inability to pay a claim
- Premiums typically 1–2% of the insured amount — priced based on DD quality and deal complexity
- Requires quality due diligence — underwriters will review the DD process carefully
- Available from circa £1m deal value upwards — increasingly common in SME transactions

Section 7 — Deal Structure Scorecard

Scoring your structure choices across key dimensions

Use this scorecard to evaluate your preferred deal structure before committing to heads of terms. Score each dimension 1 (weak) to 5 (strong) for your proposed structure.

| Dimension | Score 1–5 | Notes / Flags |
|---|-----------|---------------|
| Liability protection — are you adequately protected against historic risks? | /5 | |
| Tax efficiency — have both buyer and seller's tax positions been optimised? | /5 | |
| Price certainty — do you have confidence in the price you are paying? | /5 | |
| Cash flow — can you comfortably service the acquisition on a stressed EBITDA? | /5 | |
| Seller alignment — are seller incentives aligned with your post-deal goals? | /5 | |
| Financing quality — is the debt structure conservative and servicing-manageable? | /5 | |
| Legal robustness — are warranties, indemnities, and protections fit for purpose? | /5 | |
| Simplicity — is the structure as clean and simple as the deal allows? | /5 | |
| Governance — are post-completion control and decision rights clearly defined? | /5 | |
| Exit optionality — does the structure preserve your ability to sell or refinance? | /5 | |

| Total Score | Interpretation |
|-------------|---|
| 40–50 | Strong structure. Proceed with confidence — residual risks are manageable. |
| 28–39 | Solid. Address the lowest-scoring areas before finalising heads of terms. |
| 15–27 | Significant gaps. Restructure or seek additional protection before committing. |
| Below 15 | Fundamental issues. Do not proceed until core structural problems are resolved. |

Section 8 — Worked Examples

Three deal scenarios with structure analysis

These examples illustrate how the decision framework applies in practice. Each scenario is simplified for illustrative purposes.

Example 1 — Clean SME acquisition (management services)

| Detail | Analysis |
|------------------------------|--|
| Business | Management consultancy, £600k EBITDA, 3 year track record, no material liabilities |
| Purchase price | £2.4m (4x EBITDA multiple) |
| Structure chosen | Share purchase — clean company, no historic liabilities identified in DD |
| Consideration | £1.9m cash at completion (locked-box) + £500k deferred over 18 months |
| Financing | £1.2m acquisition term loan + £700k equity + £500k deferred (vendor finance in effect) |
| Tax considerations | Seller qualifies for BADR — effective CGT rate 10%. Buyer: no capital allowance step-up but business is people-intensive so asset base is low |
| Risk allocation | Full warranty package; 10% retention for 12 months; W&I insurance considered but deal size marginal |
| Decision tree outcome | Node 3: performance predictable (B2B contracts) → locked-box pricing. Node 5: stresses cash flow — debt service covered at 70% EBITDA. Seller does not need all cash upfront → deferred accepted |

Example 2 — Distressed trade acquisition (asset purchase)

| Detail | Analysis |
|---------------------------|---|
| Business | Manufacturing SME, loss-making, HMRC arrears, shareholder dispute |
| Purchase price | £320k for selected assets (plant, stock, customer relationships) |
| Structure chosen | Asset purchase — shares have no value; share purchase would inherit HMRC liability |
| Consideration | Cash at completion — no deferred, no earn-out (seller has no leverage) |
| Financing | 100% equity — buyer uses own capital to control cash burn risk |
| Tax considerations | Full capital allowances step-up on plant and equipment. No stamp duty on non-property assets. Buyer starts clean |
| Risk allocation | No warranty package meaningful in distressed context. Buyer relies on own DD. IP and customer contracts carefully novated |

| | |
|------------------------------|---|
| Decision tree outcome | Node 1: entity has material liabilities → asset purchase. Node 3: future highly uncertain → no earn-out. Node 5: equity only to keep risk clean |
|------------------------------|---|

Example 3 — Earn-out deal (owner-dependent services business)

| Detail | Analysis |
|------------------------------|--|
| Business | Specialist recruitment firm, £400k EBITDA, highly dependent on founder's relationships |
| Purchase price | Up to £2.8m (7x EBITDA) — but only if earn-out targets met |
| Structure chosen | Share purchase — existing client contracts in company; licences and branding intact |
| Consideration | £1.2m cash at completion + up to £1.6m earn-out over 3 years based on EBITDA targets |
| Financing | £800k acquisition loan + £400k equity + earn-out self-funding from acquired cash generation |
| Tax considerations | Earn-out treated as capital for seller if properly structured (not employment income). Careful drafting required to avoid PAYE challenge |
| Risk allocation | Detailed earn-out provisions defining EBITDA calculation, buyer obligations, non-compete for seller. W&I insurance in place for warranty element |
| Decision tree outcome | Node 3: future uncertain → earn-out. Node 6: seller essential → 3-year service agreement. Node 7: earn-out structure reviewed with tax adviser to protect seller's capital treatment |

Section 9 — Key Questions Checklist

What to ask before agreeing any deal structure

Before finalising heads of terms, work through these questions with your adviser. If you cannot answer any of them confidently, you need more information before committing.

Primary structure questions

1. Is this a share purchase or asset purchase — and why?
2. What historic liabilities are we assuming and are they quantified?
3. Are all licences, contracts, and key relationships confirmed as transferable?
4. What is the working capital position at completion and how is it being adjusted?
5. Is there a locked-box mechanism, or completion accounts — and what are the adjustment rules?

Consideration and payment questions

6. What is the total consideration and how is it split between completion and deferred?
7. If there is an earn-out — how is the metric defined, who audits it, and what are the buyer obligations?
8. Have loan notes been reviewed by a tax adviser for QCB/non-QCB treatment?
9. Is there a retention — how much, how long, what triggers release?
10. Has W&I insurance been considered and is it available at a sensible premium for this deal?

Financing questions

11. What is the total debt service obligation and what EBITDA is required to cover it comfortably?
12. Have you stress-tested the financing at 70–80% of forecast EBITDA?
13. Are there any financial covenants on the debt — and what happens if they are breached?
14. Is any personal guarantee being given — and have you fully understood the exposure?
15. What is the exit strategy and does the financing structure support it?

Tax questions

16. Has a qualified tax adviser reviewed the structure for both buyer and seller?
17. Does the seller qualify for BADR — and does the structure protect that entitlement?
18. What is the SDLT or stamp duty cost and has it been factored into the acquisition economics?
19. Are there any deferred tax liabilities being assumed in a share purchase?
20. If an earn-out is included — has the tax treatment of payments been confirmed in writing?

Need Help Structuring Your Deal?

Dealwise Advisory works with buyers and sellers to structure transactions that are commercially sound, tax-efficient, and built to close. From heads of terms to completion — we bring the CFO and M&A experience that most deals need but rarely get.

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