

TAX STRUCTURING IN M&A TRANSACTIONS



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A properly structured transaction can provide tax benefits to both the buyer and the seller. Typically, buyers want a deductible step-up in basis while sellers want capital gains treatment. Proper planning is crucial to achieving both.

Considerations

Tax considerations are important considerations in how transactions are structured. The buyer needs to determine which type of acquisition vehicle, e.g., corporation or partnership, will be used, and which type of investment vehicle currently holds the target business. There are several options at the buyer's discretion, depending on the seller's structure, to ensure it receives a step-up in basis that, in part, would be eligible for immediate expensing with the remaining step-up deducted over time. The immediate expensing can provide significant tax savings in the first year for the buyer and result in increased cash flow.

Structuring Tool

One common structuring tool for pass-through entities such as an S corporation is an F reorganization. This allows the transaction to be treated as an asset

purchase with the buyer acquiring the legal entity. The seller will still have capital gains treatment, the buyer will receive a step-up in basis, and there is an added layer of protection to the buyer from a tax exposure standpoint.

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Timing

Tax considerations can also affect the timing of transactions. In September 2021, Congress released legislative text that contained several significant tax changes, including a significant capital gains tax rate increase and effectively eliminated the small business stock tax strategy. Although this proposed increase in capital gains tax was not ultimately passed, the legislation may have caused sellers to move more quickly than originally planned. Although taxes tend not to drive business decisions of whether to sell, anticipated changes, especially to capital gains rates, could impact when sellers go to market.

If you're looking to buy or sell, our [Tax](#) and [Transaction](#) experts can help you with planning and structuring your deal for an optimal outcome. Our national Transaction professionals help private equity and strategic buyers and sellers increase value through thoughtful transaction structuring as well as being able to identify and mitigate potential risks before they arise.