

NAVIGATING BUY-SIDE TAX CONSIDERATIONS IN MERGERS AND ACQUISITIONS



**as seen in Crain's Corporate Growth & M&A Section*

In the dynamic landscape of mergers and acquisitions, the intricate dance between buyers and sellers requires a careful examination of tax implications. Whether opting for a pure asset deal or venturing into the complexities of F-Reorganizations and 338(h)(10) elections, buyers must tread cautiously to avoid unforeseen tax pitfalls.

Employer Retention Credit (ERC) Scrutiny

Buyers are now faced with the critical task of addressing the ERC in purchase agreements, acknowledging the IRS's heightened scrutiny. Understanding a target's ERC claim involves a meticulous review of analysis, support, and documentation. With potential audits looming, buyers must safeguard themselves to prevent repayment of credits and associated penalties.

F-Reorganizations and True-Up Payments

The popularity of F-Reorganizations necessitates buyer preparedness for true-up

payment requests by sellers. Particularly in cases involving specific tax planning strategies, such as the cash basis of accounting, buyers may encounter requests for compensation based on the difference in tax, leveraging the advantages of stock sales over asset sales.

Holistic Due Diligence

As the M&A landscape evolves, the prevalence of complex deal structures underscores the importance of comprehensive tax due diligence. Buyers should be attentive to issues spanning sales tax, use tax, state and local income and franchise taxes, and the Employee Retention Tax Credit. Engaging tax counsel in tandem with legal experts ensures early detection of potential issues, facilitating strategic negotiations and mitigating risks through protective language in the purchase agreement or even purchase price adjustments.

In conclusion, the success of M&A transactions hinges on a meticulous approach to tax considerations. By navigating the intricacies of ERC, F-Reorganizations, and comprehensive due diligence, buyers can fortify their position, paving the way for successful and economically sound deals.