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Mergers and Acquisitions: Taxation

Mergers and acquisitions are among the most complex transactions from a tax perspective, offering great opportunities as well as significant pitfalls for the unwary. Among the issues that must be addressed:

- Whether the purchaser will be entitled to deduct the payments made to the seller and, if so, when
- Whether the seller will be taxed at capital gain or ordinary income tax rates
- How the purchase price will be allocated among various classes of tangible and intangible assets, and the tax implications of each allocation
- Whether the "goodwill" value being purchased belongs to the corporate seller or to the individual shareholder(s)
- Whether the transaction can or should be structured as a tax-free reorganization
- Whether the seller can defer a portion of the taxable gain by reporting the sale using the installment method of tax accounting
- How state and local sales taxes will apply
- How the transaction will affect net operating losses of the seller, and whether these losses will be available to offset post-transaction income of the purchaser

In merger and acquisitions as in perhaps no other area, the slightest change to the form of a transaction—a change having little or no effect from a business perspective—can have an enormous impact on the tax results. Effective tax planning is therefore essential.

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