HBK CPAs & Consultants

# Buying a Business

Tax Advisory Group

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If you are looking to buy a business, you either can acquire the assets of the business or acquire ownership interests. Ownership interests would include the stock of a corporation, membership interest in an LLC or a partnership interest.

It is not unusual for the purchaser of the business and the seller to have conflicting preferences regarding the structure of the transaction. This conflict is magnified if the entity being purchased is a C corporation. The seller will usually want to sell their stock due to the ease, tax savings and other business and legal reasons.

It's typically advantageous for the purchaser of a business to acquire the assets of the business rather than the existing entity structure. From a tax standpoint, significant tax and cash flow differences exist based on how the transaction is structured.

For the purchaser, it typically will be advantageous to acquire the assets of the business rather than the existing entity structure. From a tax standpoint, significant tax and cash flow differences will exist based on how the transaction is structured.

Assume, for example, that you are looking to purchase a C corporation that has appreciated significantly in value from its inception. However, assume the corporation's assets have little remaining tax basis and thus no depreciation available to offset taxable income in future years. If you pay $1,000,000 for the corporation's stock, you would not benefit from future depreciation, as the assets in this example have already been fully written off.

If you were to buy the assets of such business for $1,000,000 rather than the stock, you would have depreciable or amortizable assets over their relative life. Assuming a 40 percent tax rate, the depreciation and amortization would account for $400,000 in additional cash flow over the life of the assets.

There is a solution for those purchasers who desire to acquire the corporation entity and still receive the tax benefits of an asset purchase. IRC Sections 336(e) and 388(h)(10) provide for a purchaser to acquire the stock of a corporation and treat it as an asset acquisition. Several requirements outlined in the code and regulations need to be followed. However, those provisions may provide for the perfect alternative.

Taxpayers too often make a business decision or structure a deal before consulting with their tax advisors. As can be seen by the issues and opportunities discussed above, as well as a multitude of other tax and non-tax issues, taxpayers should consult with their tax advisors when considering a business acquisition.


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JDave is a Principal in the Youngstown, Ohio office of HBK CPAs & Consultants and has been with the firm since 1994.

Dave is a member of the HBK Tax Advisory Group and has extensive experience with tax issues in the car dealership, healthcare, construction and manufacturing industries. Dave provides research and expert counsel on complex tax issues for HBK clients. He is a member of HBK's Construction Industry Group.