

Deal Structure Considerations

Asset Deal

- **Risk considerations**
 - Seller retains liabilities and contracts not specifically assumed
- **Tax considerations**
 - Immediate tax hit to buyer
 - Affords buyer ability to write up assets (tax basis), increase deductions and after-tax cash flow

Stock Deal

- **Risk considerations**
 - Seller not responsible for company liabilities
- **Tax considerations**
 - Long term capital gain rates for seller
 - Elimination of double taxation for buyer

Why deal structure is important

- Often, sellers become fixated solely on the purchase price while neglecting the importance of overall deal structure.
- Properly structuring a transaction is just as important as negotiating valuation. Expertise in structuring the terms and conditions of a transaction is critical to securing and preserving maximum value.
- Mistakes in structuring a transaction can significantly erode the hard fought value a seller has managed to negotiate.
- For an owner that is interested in remaining actively involved in the business after the sale, structuring a proper earn-out or employment agreement can add significant value.
- For a seller that desires only partial liquidity, structuring a stock transaction allows the business owner to realize monies over time and capitalize on favorable tax deferred treatment.

Asset deal vs. stock deal

- When determining the consideration that will be received from the sale of a business, it is important to understand the tax implications of the various options.
 - **Asset Deal:** The seller is paid for the assets of the business and retains specified liabilities. From a tax perspective, an asset deal may translate into a large upfront tax liability for the seller.
 - **Stock Deal:** The seller is paid for the company's shares and does not retain any liabilities. If paid in stock, the seller has the ability to take advantage of long-term capital gains tax rates by retaining buyer's stock over a period of time. To mitigate risk, the value of stock received from the buyer can be "locked-in" with the use of collars, puts and options, allowing the seller to preserve value.
- Long-term capital gains tax rates are at an all time low, allowing sellers to retain more value for their company than ever before. Currently, a seller will pay only a 15% long-term capital gains tax rate (*the lowest in history*). However, the rate will be phased up to 20% over the next five years.

GW Equity's representatives have extensive experience structuring the most structuring the most complex of transactions

- GW Equity's experience structuring transactions from a financial, accounting and legal perspective. We are experts in structuring favorable transactions that maximize value for our clients