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Tax Provisions in Taxable Private Company Acquisition Agreements: Tax Representations & Warranties, Covenants and Indemnities

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Agenda

- Part I: Introduction
- Part II: Purchase Price/Making Payments
- Part III: Tax Representations & Warranties
- Part IV: Tax Indemnification
- Part V: Tax Procedure & Covenants

Part I: Introduction

- The following discussion provides an overview of certain tax provisions of agreements related to taxable acquisitions of private corporations.
- The main aspects of the agreements we will highlight include the provisions regarding purchase price, tax representations and warranties, indemnification and general tax-related covenants.
- Whether or not specific provisions are included in a particular agreement (and the manner in which such provisions are drafted) will depend on a number of factors, including the facts surrounding a specific transaction and the relative positions of the parties.

Acquisition Structure

- Stock purchase transactions generally may be structured as either a direct purchase or reverse subsidiary merger.
  - Stock acquisitions generally are taxable at the shareholder level unless non-recognition provision applies (*e.g.*, Section 368(a)(2)(E)).
  - Stock acquisitions generally require fewer consents than asset acquisitions (*e.g.*, from lenders, lessors).

Acquisition Structure

- Asset acquisitions generally may be structured as actual asset acquisitions, direct mergers, forward subsidiary mergers or, in certain cases, stock acquisitions with an applicable Section 338 election.
  - Unless a non-recognition provision applies (*e.g.,* Sections 368(a)(1)(A) or (a)(2)(D)), asset acquisitions generally are taxable at the corporate level (and possibly the shareholder level if the seller liquidates).
  - Asset acquisitions also may require additional consents (*e.g.,* from lenders, lessors).

Objectives

- **General** - The tax-related provisions of an acquisition agreement serve various functions, including providing information and contractually allocating responsibility for payment of taxes, filing of tax returns, control of tax related claims and other matters.
- **Buyer's Objectives** – obtain maximum information regarding Targets' tax history, flexibility regarding post-closing actions and restructuring, broad indemnification and level of post-closing involvement and cooperation necessary or appropriate in light of other rights and obligations in the agreement.
- **Seller's Objectives** – minimize risk that transaction will not close due to breaches, limit Buyer's ability to take actions after the closing that could affect Seller's pre-closing tax liability, minimize indemnification obligations, and obtain level of post-closing involvement and cooperation necessary or appropriate in light of other rights and obligations in the agreement.

Part II:
Purchase Price/Making Payments

- Purchase Price Adjustment/Working Capital Adjustment
- Purchase Price Allocation
- Escrow
- Withholding Provisions
- Absence of Changes

Purchase Price Adjustment/ Working Capital Adjustment

- In general, “working capital” (generally defined as current assets minus current liabilities) is a mechanism for adjusting purchase price to account for changes after signing.
  - Determination of target and final working capital numbers
  - Make appropriate adjustments to purchase price
- Non-current portion of deferred tax assets/deferred tax liabilities are typically excluded.
- Treatment of current tax assets/liabilities varies.
  - Exclude taxes from calculation? Include non-income taxes? Refunds?
- Federal and state treatment of certain amounts may vary.
- Transaction tax benefits
- Trapped cash - different approaches:
  - Deduct cost of utilizing cash – *e.g.*, taxes on repatriation
  - Cap amount of cash taken into account

Purchase Price Allocation

- Provisions generally will address method of allocating purchase price among acquired assets (or multiple Targets), mechanisms for resolving disagreements and covenants regarding future tax reporting.
  - Allocations among entities generally should be less complicated than allocations among assets constituting a trade or business under Section 1060.
- Issues to consider:
  - Who prepares?
  - Obligate parties to agree?
  - Timing?
  - How to resolve disagreements?

Purchase Price Allocation
Sample Language

- The Final Purchase Price (including for these purposes the amount of the Assumed Liabilities and the Seller covenant not to compete described in Section [__] properly included as a part of the purchase price for U.S. federal income Tax purposes) shall be allocated among the Target Assets and the Seller covenant not to compete in the manner required by Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or non-U.S. Law) (the "Allocation"). The Allocation shall be prepared by Buyer for the review and approval of Seller within [__] days after the date on which the Final Closing Working Capital Statement is determined. If within [__] days after delivery of the Allocation, Seller notifies Buyer in writing that Seller objects to the allocation set forth in the Allocation, Buyer and Seller shall use commercially reasonable efforts to resolve such dispute within [__] days thereafter. In the event that Buyer and Seller are unable to resolve such dispute within such [__] days, Buyer and Seller shall, within [__] days after such [__] day period, submit such disputed items to the CPA Firm for resolution under the procedures set forth in Section [__]. Buyer and Seller shall make available to the CPA Firm, in connection with the foregoing, all relevant work papers relating to the Allocation calculation. . . .

Purchase Price Allocation
Sample Language

- . . . . The final version of the Allocation as determined in accordance with the foregoing shall become part of this Agreement for all purposes. Buyer and Seller shall file all Tax Returns (including, but not limited to, IRS Form 8594) consistent with the Allocation. Neither Buyer nor Seller shall take any Tax position inconsistent with such Allocation and neither Buyer nor Seller shall agree to any proposed adjustment to the Allocation by any Taxing authority without first giving the other party prior written notice; <u>provided</u>, <u>however</u>, that nothing contained herein shall prevent Buyer or Seller from settling any proposed deficiency or adjustment by any Taxing authority based upon or arising out of the Allocation, and neither Buyer nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any taxing authority challenging such Allocation. Not later than [___] days prior to the filing of their respective IRS Forms 8594 relating to this transaction, each of Buyer and Seller shall deliver to the other party a copy of its IRS Form 8594. If the Final Purchase Price is adjusted pursuant to this Agreement, the Allocation shall be adjusted in a manner consistent with the procedures set forth in Section [___].

Escrow

- Funds may be held in escrow for a variety of reasons (*e.g.,* to fund purchase price adjustments or provide a source of indemnification for breaches of representations or covenants).
- Parties should consider:
  - Who will be the owner of the escrowed funds? Does Seller want to use the installment method?
  - If the escrowed amounts include stock, which party will have dividend and voting rights during the escrow period? This will bear on the tax ownership of the escrowed stock and the tax treatment of the release of the stock from escrow.
  - Will tax distributions be permitted?
- Treatment of funds released from escrow:
  - Amounts generally will be treated, in part, as purchase price and, in part, as interest.
  - Consider whether adjustment to purchase price allocation must be made.

Withholding Provisions

- Frequently agreements will contain express provisions that the Buyer may deduct and withhold applicable taxes from the purchase price or other payments.
  - If this provision is not included, Buyer should confirm there is no gross up of purchase price.
- If purchase price is allocated to a covenant not to compete from a non-U.S. person, withholding may be required.
- Parties may consider adding specific references to payment provisions where withholding would apply (*e.g.*, compensatory payments).
- If there is an escrow, consider providing for distributions to Buyer or its designee to enable compliance with withholding obligations.

Withholding Provisions
Sample Language

- [Each of] Buyer [and the Exchange Agent] shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to Seller [or any other Person] such amounts as [each of] Buyer [and the Exchange Agent] is required to deduct and withhold under the Code, or any Tax law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. [For the avoidance of doubt, to the extent any amounts are required to be so withheld from any distributions from the [Escrow Account], such amounts required to be withheld shall be distributed to Buyer (or an entity designated by Buyer) to enable Buyer (or any such designated entity) to comply with its withholding obligations (including without limitation, any obligations of the [Target]).]

Absence of Changes
Sample Language

- Sellers will frequently represent there have not been changes with respect to certain tax matters since a specific date (*e.g.*, the balance sheet date).
- Sample Language:
  - Since [the date of balance sheet], there has been no new, change in or revocation of any [material] Tax election; settlement or compromise of any claim, notice, audit report or assessment in respect of [material] Taxes; change in any annual Tax accounting period, adoption or change in any method of Tax accounting; filing of any amended [material] Tax Return; entrance into any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a material Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any [material] Tax claim or assessment.

Part III:
Tax Representations & Warranties

- Overview
- Sample Language

Tax Representations & Warranties: Overview

- Purposes:
  - Confirm fundamental assumptions
  - Diligence
  - Closing condition
  - Basis for indemnification claim
  - Foundation for future reporting

- The scope of these representations will vary based on type of deal, type of target, indemnity protection, and issues raised in diligence.

Tax Representations by Seller
Sample Language

- Tax Returns:
  - Targets have timely filed all Tax Returns [for income Taxes and all other material Tax Returns] required to be filed.
  - Tax Returns are complete and accurate [in all material respects].
  - All Taxes due and owing by the Targets (whether or not shown on any Tax Returns) have been paid.

[Bracketed: Seller Preferences] The examples in these pages are generally pro-Buyer.

Tax Representations by Seller
Sample Language

- None of Targets is currently the beneficiary of any <u>extension of time</u> within which to file any Tax Return, nor has any such extension been requested.

- No claim has ever been made by an authority in a jurisdiction where a Target <u>does not file</u> a Tax Return that it is or may be subject to Taxation by that jurisdiction with respect to the Taxes that would be the subject of such Tax Return.

Tax Representations by Seller
Sample Language

- No <u>deficiencies</u> for Taxes of the Targets have been claimed, proposed or assessed by any taxing authority or other Governmental Body.

- No pending or threatened <u>audits</u>, assessments or other actions for or relating to any liability in respect of Taxes … no matters under discussion with any taxing authority or other Governmental Bodies, or known … with respect to Taxes that are likely to result in an additional Liability for Taxes.

Tax Representations by Seller
Sample Language

- Targets have <u>delivered or made available</u> to Buyer complete and accurate copies of all Tax Returns [for income Taxes and all other material Tax Returns] for all taxable years since December 31, 20__ and complete and accurate copies of all examination reports and statements of deficiencies assessed against Targets since December 31, 20__.

- No Target has <u>waived any statute of limitations</u> in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, nor has any request been made in writing for any such extension or waiver.

Tax Representations by Seller
Sample Language

- There are no Tax sharing agreements or similar arrangements between Target and a non-Target affiliate and no Target shall have any liability or be bound by any such Tax sharing agreements or similar arrangements to which it is a party.

- Targets are not members of any consolidated, combined, affiliated, aggregate or unitary group of persons for purposes of determining Tax liability or filing any Tax Returns.

- Targets have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.

- No Target has ever filed an entity classification election Form 8832 under Section 7701 of the Code.

Tax Representations by Seller Sample Language

- No non-U.S. Target (i) has or has had any nexus with the United States, a trade or business or permanent establishment within the United States or any other connection with the United States that has subjected or could reasonably be expected to have subjected it to U.S. federal, state or local Tax; (ii) is or was a "surrogate foreign corporation" within the meaning of Section 7874(a)(2)(B) of the Code or is treated as a U.S. corporation under Section 7874(b) of the Code; or (iii) was created or organized in the United States such that such entity would be taxable in the United States as a domestic entity pursuant to United States Treasury Regulation Section 301.7701-5(a).

- No non-US Target has participated in or is it participating in an international boycott within the meaning of Section 999 of the Code.

Tax Representations by Seller
Sample Language

- No non-U.S. Target holds assets that constitute U.S. property within the meaning of Section 956 of the Code.

- For the period commencing on the first day of any Straddle Period and ending at the close of business on the Closing Date, no non-U.S. Target has any item of income which could constitute subpart F income within the meaning of Section 952 of the Code.

- All transfer pricing rules have been complied with. All documentation required by all relevant transfer pricing laws has been timely prepared.

- No Target has made an election under Section 897(i) of the Code or has been a U.S. real property holding company within the meaning of Section 897 of the Code.

Part IV:
Tax Indemnification

- Overview
- Sample Language

Tax Indemnification: Overview

- The indemnity generally will provide for recovery for breach of tax representations and/or separate pre-closing tax indemnity.

- Recovery for breach of tax representations is not co-extensive with a separate pre-closing tax indemnity, as breach of tax representation typically allows recovery for post-closing harm caused by breach.

- Recovery under the separate pre-closing tax indemnity does not require a breach of a tax representation (and therefore does not take disclosure schedules into account).

Tax Indemnification: Overview

- The scope of the indemnity and survival of representations and indemnity vary by type of deal:
  - Public deal – generally no indemnity or survival of representations.
  - Financial seller (such as VC fund, private equity fund) – generally limited indemnity and survival of representations.
  - Other deals – may have full indemnity, both separate pre-closing tax indemnity and indemnity for breach of representations, which generally survive until the expiration of the statute of limitations plus [30, 60 or 90] days.
- The indemnification may cover post-signing, pre-closing and post-closing matters.

Tax Indemnification: Additional Considerations

- Special issues to consider:
  - Any pre-closing restructuring (*e.g.*, “dormant” subsidiaries)?
  - Have there been elections and other actions affecting the other party’s tax liability?
  - Do deductibles, baskets and caps apply to tax indemnification obligation? (Limitations may apply to breaches of representations but not to separate tax indemnity).
  - Seller generally will want benefit of pre-closing refunds received post-closing to be paid to Seller (if not included in working capital).
  - Seller may ask for indemnification payments to be reduced by amount of tax benefit recognized by Buyer in connection with a loss.

Tax Indemnification: Additional Considerations

- Scope of indemnity will affect other provisions:
  - Preparation and review of tax returns for pre-closing, straddle and post-closing periods.
  - Tax audits and contesting tax claims (*e.g.*, control, consent rights over settlement).
  - Mutual cooperation, record retention and sharing of information.

Tax Indemnification Sample Language

- (a) [[The Seller Indemnifying Parties] agree to, jointly and severally, indemnify, save and hold the [Buyer Indemnified Parties] harmless from and against any and all [Losses] incurred in connection with, arising out of, resulting from or incident to] (i) any Taxes of the Company or any of its Subsidiaries with respect to any Pre-Closing Tax Period, (ii) Taxes of Sellers (including, without limitation, capital gains Taxes arising as a result of the transactions contemplated by this Agreement) or any of their Affiliates (excluding the Company and its Subsidiaries) for any Tax period; (iii) Taxes attributable to any breach or inaccuracy of any representation in Section [*Tax representations*] or any failure to comply with any covenant or agreement of Sellers (including any obligation to cause the Company or any of its Subsidiaries to take, or refrain from taking, any action under this Agreement); (iv) Taxes attributable to any restructuring or reorganization undertaken by Sellers, the Company or any of its Subsidiaries prior to the Closing;] . . . .

Tax Indemnification by Seller Sample Language

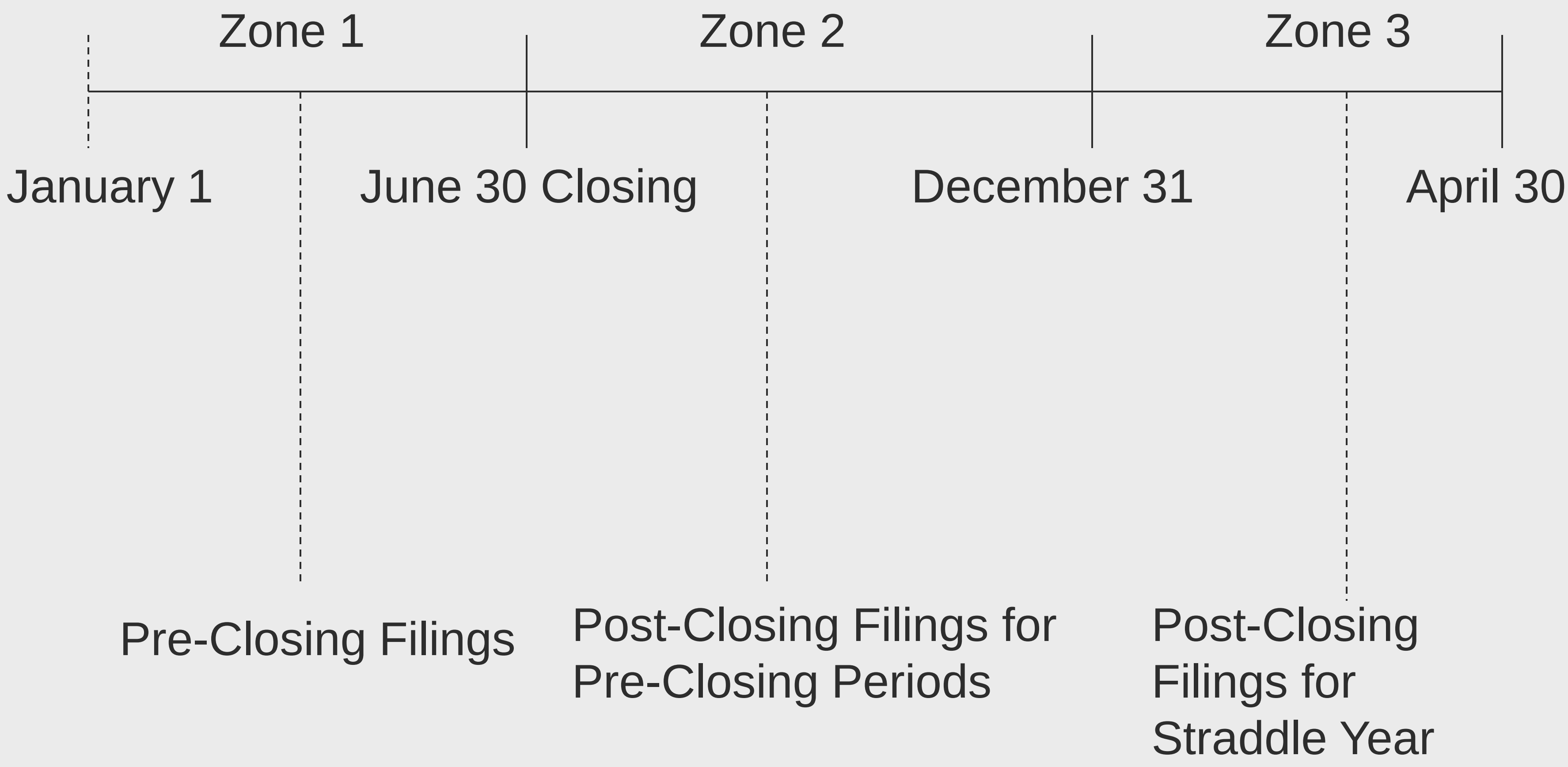
- . . . . . (v) Taxes for which the Company or any of its Subsidiaries (or any predecessor of the foregoing) is held liable under Section 1.1502-6 of the United States Treasury Regulations (or any similar provision of state, local or non-U.S. Law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group at any time on or before the Closing Date; (vi) Taxes imposed on or payable by third parties with respect to which the Company or any of its Subsidiaries has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Closing, and (vii) [any Taxes arising out of or resulting from the payment of the Closing Debt][; provided, however, that the Seller Indemnifying Parties shall have no liability under this Section [__] for any Taxes to the extent such Taxes were specifically reflected in the [Closing Working Capital].

- (b) Payment in full of any amount due from the Seller Indemnifying Parties under this Section [__] shall be made to the relevant Buyer Indemnified Party (as directed by Buyer) in immediately available funds at least [two Business Days] before the date payment of the Taxes to which such payment relates is due, or, if no Tax is payable, within fifteen days after written demand is made for such payment.

Part V:
Tax Procedure & Covenants

- Tax Returns
- Tax Audits & Contests
- Refunds & Attributes
- Section 338 Election
- Other Issues Generally

Tax Returns: Timeline



Tax Procedure for Zone 1: Tax Returns Due Pre-Closing (and Relating to Pre-Closing Periods)

- Target (or Seller) has responsibility for filing these tax returns and paying taxes due with respect to such tax returns.

- Target (or Seller) must treat items on such tax returns in a manner consistent with past practices.

- Seller will submit a copy of such tax returns to Buyer for Buyer's review and approval as to conformity with the requirements of the purchase agreement, which approval shall not be unreasonably withheld.
  - Consider whether Buyer should be able to make comments.

Tax Procedure for Zone 2: Tax Returns Due Post-Closing (and Relating to Pre-Closing Periods)

- Target (with Seller’s [or Buyer’s] assistance) is responsible for filing these tax returns.
  - Whether Seller or Buyer prepares these returns may vary depending on the type of tax involved (*e.g.,* income vs. property taxes).

- Seller pays the taxes with respect to such tax returns to the extent such taxes exceed the accruals on closing balance sheet (*i.e.,* tax accruals that were taken into account in determining the purchase price).
  - The agreement should address the payment procedure (*e.g.,* number of days).

- Items on such tax returns should be treated in a manner consistent with past practices.

- Seller will submit a copy of such tax returns to Buyer for Buyer’s review and approval as to conformity with the requirements of the agreement, which approval will not be unreasonably withheld.
  - This could be other way around depending upon who will file.
  - Consider whether non-preparing party should be able to make comments.

Tax Procedure for Zone 3: Tax Returns Due Post-Closing (Relating to Straddle Periods)

- Target (with Buyer's assistance) files these tax returns.
- Seller pays the taxes with respect to such tax returns attributable to the pre-closing period to the extent such taxes exceed the accruals on the closing balance sheet (*i.e.*, tax accruals that were taken into account in determining the purchase price).
  - The agreement should address the payment procedure (*e.g.*, number of days).
- Items on such tax returns should be treated in a manner consistent with past practices.
- Buyer will submit a copy of such tax returns to Seller for Seller's review and approval as to conformity with the requirements of the purchase agreement, which approval will not be unreasonably withheld.
  - Consider whether Seller should be able to make comments.

Allocation of Straddle Period Taxes

- Sellers pay the taxes allocable to the portion of the straddle period deemed to end on the closing date except for:
  - Taxes accrued on closing balance sheet (*i.e.*, tax accruals that were taken into account in determining the purchase price); and
  - Taxes incurred solely by reason of any transaction undertaken by Buyer or Target after the closing or any election made by Buyer or Target without the consent of Sellers, unless such transaction or election is specifically contemplated by the purchase agreement.

Allocation of Straddle Period Taxes Sample Language

The portion of any Tax that is allocable to the taxable period that is deemed to end on the Closing Date will be: (i) in the case of real property, personal property and similar *ad valorem* Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of Target terminated at the close of business on the Closing Date.

Tax Contests for Pre-Closing Periods

- The agreement generally will provide for mutual cooperation, record retention and sharing of information with respect to tax matters.
- Buyer generally will control tax audits, provided that Seller may assume control if it has an indemnification obligation under the agreement.
  - Frequently, Buyer will want Seller to agree that it will be liable for applicable taxes and costs prior to allowing Seller to assume control.
- Buyer will often want joint control of audits, since outcome of audit controlled by Seller could affect Buyer's tax planning or post-closing tax position.
  - Common compromise is for joint control if resolution of tax contest could [materially] adversely affect taxes in a post-closing period.
- At a minimum, Buyer will want a consent right over any settlements.

- Seller will want refunds with respect to pre-closing periods (unless the refund was taken into account in determining the purchase price).

- Buyer generally will not want to file an amended tax return to obtain a refund for Seller’s benefit.

- Seller will not want Buyer to file an amended tax return that could increase Seller’s pre-closing tax liability.

- Seller will want indemnification obligation limited to pre-closing cash taxes and to exclude diminution in pre-closing tax attributes (*e.g.*, NOLs).

- Buyer may assert it “paid” for tax attributes and, thus, should be indemnified for diminution in tax attributes.
  - Note parties should discuss the business arrangement with respect to these matters when drafting the agreement.

- Requirements
- Consequences
- Section 338(h)(10) Election v. Section 338(g) Election
- Section 338 Election – Tax Covenants

- Requirements:
  - Corporate Purchaser:
    - Buyer must be a C corporation or an S corporation.
  - Qualified Stock Purchase 80% of Shares:
    - Transaction or series of transactions during one-month period in which Buyer purchases <u>80% of Target's stock</u> in transactions <u>taxable</u> to Seller.
  - Election:
    - Buyer must make election no later than the 15th day of the ninth month beginning after the month in which Buyer satisfied the 80% ownership requirement.

- Consequences:
  - Target’s selling shareholders treated as having sold their stock to Buyer.
  - Target undergoes “deemed sale” of assets at fair market value in a single transaction to a new corporation (Target Newco) and is taxed on the full gain/loss on deemed asset sale.
  - Target Newco treated as purchasing Target’s assets for price paid for Target’s stock (plus Target’s liabilities and Buyer’s costs).
  - Target’s tax attributes (*e.g.*, E&P, credits, etc.) disappear.

- Section 338(g) Election:
  - Buyer can make a unilateral Section 338(g) election when purchasing a Target.
  - If Target is a U.S. corporation, Section 338(g) election might only make sense if Target has substantial NOLs to shelter deemed sale gain. All deemed asset sale gain is reported in a separate return (typically no indemnification by Seller) in addition to actual gain to Seller on stock sale.
  - Section 338(g) election is typical in acquisitions of non-U.S. Targets.

- Section 338(h)(10) Election:
  - Buyer and Seller must jointly make Section 338(h)(10) election.
  - Election only available upon purchasing U.S. subsidiary from a U.S. consolidated group or upon acquisition of an S corporation.
  - Deemed asset sale gain in Seller consolidated group return in lieu of actual gain on stock sale (*i.e.*, one level of tax). Tax costs typically dealt with in negotiation, balancing Seller cost v. Buyer step-up.

- Seller & Buyer:
  - Parties must determine the technical consequences of making the election.
  - If a Section 338 election is made, Target’s tax year closes.
- Seller:
  - If the parties do not agree to a Section 338 election, Seller should include language in the purchase agreement limiting Buyer’s post-closing actions.
- Buyer:
  - If the parties do not discuss making a Section 338 election, Buyer should try to maintain post-closing flexibility.

- Seller Mandates Section 338(g) Election:
  - Buyer shall make an election for [Target and any subsidiaries] under Section 338(g) of the Code.
  - Note: Seller may also want to prohibit Buyer from assigning agreement to an affiliate (*e.g.*, a partnership) that could prevent the election.
- Seller Prohibits Section 338(g) Election:
  - Except with the express written consent of Seller, which can be withheld in Seller's sole and absolute discretion, Buyer shall not make an election for [Target or any subsidiaries] under Section 338(g) of the Code.

- Transfer Taxes:
  - Parties generally will include language regarding who will pay the taxes and prepare the related tax returns.
  - Note that legal liability for payment and filing may be different from contractual arrangement.
- Seller Certificates:
  - Buyer will want to obtain an applicable FIRPTA certificate and any other applicable documents to establish an exemption from or reduction in withholding.
- Note that even if Target is a loss company, parties should consider potential non-income tax exposure (*e.g.*, sales tax, withholding tax).

- "Code" means the Internal Revenue Code of 1986, as amended.
- "IRS" means the United States Internal Revenue Service.
- "Post-Closing Tax Period" means any Tax period beginning after the Closing Date and that portion of any Straddle Period beginning after the Closing Date.
- "Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on the Closing Date.
- "Property Taxes" means all real property Taxes, personal property Taxes and similar ad valorem Taxes.
- "Straddle Period" means any Tax period beginning before or on and ending after the Closing Date.
- "Tax" or "Taxes" means any federal, state, local or non-U.S. income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other [Person] by [Law], by [Contract] or otherwise.
- "Tax Authority" means any [governmental agency, board, bureau, body, department or authority of any United States federal, state or local jurisdiction or any non-U.S. jurisdiction]/[Governmental Authority], having or purporting to exercise jurisdiction with respect to any Tax.
- "Tax Return" means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.
- "Transfer Taxes" means all sales taxes, transfer taxes, stamp taxes, conveyance taxes, mortgage taxes, intangible taxes, documentary recording taxes, license and registration fees, notarial fees incurred in connection with the execution of any deed of transfer, and recording fees, if any, imposed by any Governmental Authority.

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