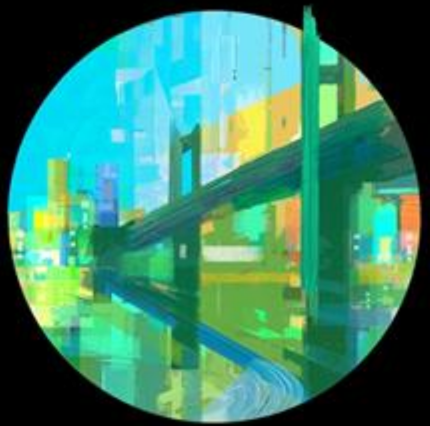
Deloitte.



## M&A tax considerations across a range of transactions

# Buy-side

Before acquiring a target Company, business leaders should understand the overall historical tax risk profile of the target Company and how to obtain contractual protection for historical tax risks. It's also important to consider how the acquisition could impact future tax planning and whether any potential tax attributes or step-up in tax basis are available that may impact the deal. Below is a sample of high-level questions that dealmakers should consider:

### 1 How does the tax profile of the target Company impact the tax implications of the transaction?

- The Company's tax classification (e.g., C corporation, S corporation, partnership, disregarded entity) and structure of the transaction (e.g., stock versus asset) can impact the type of tax due diligence procedures that should be performed.
- US federal, state, local, international, and local country taxes may carryover with the Company in the transaction and become Buyer's responsibility.
- A tax basis step-up in the Company's assets may be available to a Buyer depending on the tax classification of the entity or the structure of the transaction (e.g., asset versus stock).
- Tax attributes (if applicable) may carryover with the Company subject to annual limitations on use.
- Buyer or Seller transfer taxes may be expected as a result of the transaction.

### 2 Has the Company undergone any significant M&A activity and what were the tax implications?

- Identify which entities were formed versus acquired and assess current equity and debt structure.
- Analyze past acquisitions for unresolved tax liabilities and assess their impact on tax attributes, integration, and overall tax risk profile.
- Known significant tax exposures may require a purchase price adjustment or other contractual protection.
- Co-investors or structural complexities could create additional tax considerations.

### 3 Where does the Company operate, and what are its tax obligations?

- A Company's tax function and the extent of centralization/coordination of tax compliance may impact the overall tax risk profile.
- Identifying key jurisdictions where the Company generates revenue and pays taxes can help identify tax matters that should be addressed during the tax due diligence process.
- Risks related to transfer pricing, permanent establishment, cross-border taxation, and cash repatriation may need to be considered.

### 4 What significant tax attributes does the Company have?

- Tax loss carryforwards, credits, and deductions may impact valuation and future tax liabilities.
- Depreciation and amortization, research and development costs, interest expense, and other book-to-tax differences may need to be considered in a Buyer's investment model.
- Tax attributes may not be transferable or may be limited on use post-transaction due to ownership changes.

### 5 How does global tax legislation impact the deal?

- Evolving tax policies (e.g., Pillar 2, tariffs) may affect go-forward tax compliance and post-closing tax liabilities.
- Legislation and regulatory shifts may impact structuring and purchase agreement discussions.
- Uncertainty in tax legislation may create a need to model different scenarios with a focus on integration matters.
- Legal entity structure can have a significant impact on the organization's exposure to global tax legislation.

## 6 What are other common tax due diligence matters that may be applicable in the transaction?

- Depending on the tax profile of the Company, other tax matters may impact negotiations:
  - Active tax audits and potential financial impact
  - Whether the transaction itself may increase tax authority scrutiny
  - Executive compensation and applicability of change in control limitations
  - Intercompany transactions, related transfer pricing policies and documentation, and impact on integration
  - State income tax sourcing and apportionment
  - Applicability and compliance with indirect taxes (e.g., sales and use taxes) and any related exemptions

## 7 How can a Buyer obtain contractual protection for historical tax matters in a purchase agreement?

- Identify tax disclosures and purchase price adjustments related to known tax exposures.
- Consider Representation & Warranty insurance or specific tax insurance to mitigate tax risks in the transaction.
- Assess the need for an escrow versus a tax indemnity and whether either are available.
- Assess whether voluntary disclosure agreements or other settlements may be warranted and assign responsibility for the incremental tax liabilities.
- Identify tax disclosures or tax filings that may be necessary pre-closing and understand who is responsible for post-closing tax matters and appropriate review rights (e.g., filing of tax returns, audits, refunds, etc.).

# Let's talk


**Lindsay Wietfeld**
**US M&A Tax Marketplace Leader**
Deloitte Tax LLP
Mobile: +1 402 238 8308
Email: lwietfeld@deloitte.com

**Jim Watson**
**US M&A Tax Leader**
Deloitte Tax LLP
Mobile: +1 862 251 0333
Email: jamwatson@deloitte.com