

# Mergers & Acquisitions Master Class Education Series Deal Structures

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**BARNES DENNIG**  
Accounting • Tax • Business Insight



## Legal Consequences of Deal types

	<u>Stock Purchase</u>	<u>Asset Purchase</u>
Buyer Perspective	Unfavorable <sup>1</sup>	Favorable <sup>3</sup>
Seller Perspective	Favorable <sup>2</sup>	Unfavorable <sup>4</sup>
<sup>1</sup> Buyer takes on legal liabilities of seller post-closing		
<sup>2</sup> Simpler deal for seller, buyer takes responsibility for liabilities if disclosed		
<sup>3</sup> Seller retains liabilities for prior acts		
<sup>4</sup> Seller retains liabilities for prior acts		

## Practical Consequences of Deal Types

	<u>Stock Purchase</u>	<u>Asset Purchase</u>
Buyer Perspective	Favorable <sup>1</sup>	Unfavorable <sup>3</sup>
Seller Perspective	Favorable <sup>2</sup>	Unfavorable <sup>4</sup>
<sup>1</sup> Buyer: company, employees, vendors and customer continue on		
<sup>2</sup> Seller walks away with no legacy company to manage		
<sup>3</sup> Buyer must rehire employees, execute new contracts with vendors and customers		
<sup>4</sup> Seller must close down legacy company, final tax returns, etc.		

## Tax Consequences of Deal types

	<u>Stock Purchase</u>	<u>Asset Purchase</u>
Buyer Perspective	Unfavorable <sup>1</sup>	Favorable <sup>3</sup>
Seller Perspective	Favorable <sup>2</sup>	Unfavorable <sup>4</sup>
<sup>1</sup> Buyer loses 'step-up' and goodwill deductions		
<sup>2</sup> Seller gets capital gains treatment for entire gain		
<sup>3</sup> Buyer can 'step-up' asset values and gain depreciation and goodwill deductions		
<sup>4</sup> Seller may incur gains taxed at ordinary income rates		

DEAL ISSUES	STOCK SALE	ASSET SALE
Legal	All liabilities of seller transfer to buyer	Buyer is not responsible for legal obligations of seller
Co. Structure	All equity in company transfers to buyer	Seller retains old shell company out of which assets were sold, buyer sets up NewCo
Tax implications	No asset step up, significant goodwill booked	Tax benefits of asset step-up
Financial liabilities	Generally all financial obligations of seller are assumed by buyer.	Buyer may agree to assume selected financial liabilities, or none, in which case seller pays off liabilities at close to sell assets unencumbered by seller debt
Tax Filing	Company files single tax return for year, allocating profits between buyer and seller	Seller retains old company, files tax return separate from buyer. Buyer files 'stub period' return.
Contracts	Generally unaffected, continue on	Generally not assumable, must be redrafted and newly executed by buyer
Employees	Generally unaffected, continue on	Must be terminated by seller and hired by buyer
Tax obligations	All unfulfilled obligations fall to buyer	Certain regulatory obligations of seller (payroll and sales taxes) may follow the assets and be assessed to buyer, but generally buyer is not liable for financial liabilities of seller not specifically assumed

# Conventional Acquisition Term Loans

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1. Typically will finance up to 75% of purchase price
2. Looking for collateral, good credit, strong operating history of company, cash flow
3. Acquisition term loans for 5 to 10 years
4. Right now most popular are 5/10 loans: 5-year term with 10-year principal amortization
5. Looking for Debt Service Coverage Ratio (DSCR) of 1.25 or greater
6. May contain prepayment provisions
7. Will require personal guarantees
8. Intercreditor agreement with seller if seller note involved
9. Can be used to purchase less than 100% of company



# SBA: 7(a) Acquisition Loan Program

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1. Money lent by conventional lender, guaranteed by SBA
2. Often can get in for 10% down
3. Up to 10-year term
4. No prepayment penalties
5. Will require personal guarantees
6. Looking for Debt Service Coverage Ratio (DSCR) of 1.25 or greater
7. Looking at SBA fee of 3.5%- 3.75% of loan amount
8. Rates set by lender, usually 0.5% - 2.0% higher than conventional rates
9. Personal guarantee required for all 20% or more owners
10. 2-year suspension of payments on seller notes
11. Cannot be used to purchase less than 100% ownership of a company
12. Can include a provision for line of credit for working capital purposes

## 504: Used for real estate loans

Not covered here