MERGERS + ACQUISITIONS

When companies are considering a merger with or acquisition of another company, retirement plan changes are often overlooked. Discussing how each plan will change before the transaction takes place will save both time and money.

There are generally two types of business transactions that can occur when acquiring a company – an asset sale or a stock sale. Both types can affect the retirement plans involved. You should always consult an attorney for legal and tax advice regarding either business transaction.

ASSET SALES

The buying company ("Buyer") acquires all or part of the assets of the selling company ("Seller") but the Seller continues to exist, so they generally remain the sponsor of their own existing plan; however, the Buyer may assume responsibility of the Seller's plan as a result of the transaction. Should the Buyer not assume responsibility of the Seller's plan, then both plans should be reviewed for the following:

- If a number of the Seller's employees become employees of the Buyer, then the Seller's plan should be reviewed for a partial plan termination.
- The Buyer's plan should be reviewed to determine whether prior service with the Seller will be honored for eligibility, vesting, and/or benefit accruals.
- The Buyer may allow the Seller's employees, if now employed by Buyer, to rollover their account balance into the Buyer's plan.

STOCK SALES

The purchase of another company's shares which result in the buying company ("Buyer") acquiring all of the outstanding stock of the selling company ("Seller"). If the Buyer already maintains a similar retirement plan of their own, there are generally three options for dealing with the two plans.

- **Maintain both plans.**
    - Both plans continue operation. Since Seller's employees are now employees of the Buyer, coordination of the compliance testing across both plans is required.
        - This can cause an issue if the two plans have different third-party administrators. The Buyer would be responsible for the administration of both plans and any historical and/or future issues with the Seller's plan.
    - The provisions of each plan identifying the covered employees should be reviewed to ensure proper coverage after the acquisition.
    - Additional coordination between plans and across the company will be necessary if an employee could transfer between plans.

- **Merge the plans together.**
    - Ensure no protected benefits are violated in either plan as a result of the merger.
    - The Buyer is still responsible for all historical activity in the Seller's plan.

- **Terminate selling company's plan.**
    - Depending on the type of plan the Seller has; this option may only be available if the termination of the Seller's plan occurs before the stock sale.
    - The Buyer may allow the Seller's employees, if now employed by Buyer, to rollover their account balance into the Buyer's plan.
    - Due to the fact that it is a stock sale, the Buyer is generally required to honor the prior service with the Seller in the Buyer's plan. As a result, the Buyer's plan should be reviewed to ensure proper coverage and coordination of these requirements.

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