

Navigating the new tax landscape

If you're considering buying or selling a business, the precarious state of the economy shouldn't be your only concern. You also need to think about the potential for major tax law changes that could affect business owners and a few that could affect M&A transactions. You should be prepared to work with your advisors to navigate the new tax landscape.

Change will come

Tax changes are far from definite, and new policies will likely take time to pass through Congress and go into effect. Still, many tax experts believe that the current administration will be able to enact into law an increase in long-term capital gains tax, from the current 15% rate to 20%.

Higher taxes for some individuals and many companies are also likely. The White House has proposed to increase the top two income tax rates to 36% and 39.6%, from 33% and 35%, respectively. This could affect many small businesses because, as a 2007 National Federation of Independent Business survey found, about 15% of small-business owners and half of those with at least 20 employees claimed household incomes of more than \$200,000 and likely fall into the top brackets.

Also, estate tax law changes could affect many business owners. Currently, the estate tax is scheduled to disappear in 2010 but resume in 2011 with a top estate tax exemption of \$1 million and top estate tax rate of 55%. Many believe that lawmakers won't allow the estate tax to expire and instead will make permanent the 2009 estate tax law, which provides a \$3.5 million estate tax exemption and a top estate tax rate of 45%.

Defer no more

A policy that enables U.S.-based companies to defer paying taxes on overseas subsidiary income is also expected to change, and could affect some business buyers. Currently, tax laws allow U.S. companies to defer taxes on this income until the subsidiary transfers the money to the parent company. Going forward, however, companies will likely have to pay these taxes immediately. If your company buys a business with overseas operations, you'll need to report all overseas income, which could be a major tax burden and reduce corporate income significantly.

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A few positives

Although some tax policy changes may make certain transactions less advantageous and more complicated, others can benefit M&A participants. For example, the Stimulus act passed in February extends the maximum net operating loss (NOL) carryback period to five years for qualified small businesses with gross receipts of \$15 million or less. Generally, an NOL may be carried back only two years. The extended carryback period applies to 2008 (not 2009) NOLs and could help fundamentally sound but temporarily troubled companies with what is essentially a tax refund — boosting their bottom line and enhancing their sale prospects.

The Stimulus act also includes a provision for businesses, in certain situations, to defer cancellation-of-debt income (CODI) generated from repurchasing business debt after Dec. 31, 2008, and before Jan. 1, 2011, until calendar year 2014. This could be an incentive for a business seller to buy back debt and reduce its debt load.

Knowledge is power

If you're considering selling your business or making an acquisition in the near future, a potentially higher tax bill or more-complex deal process could give you the incentive to speed up your deal. Before you act, however, discuss your plans with an experienced tax advisor. Tax and M&A professionals can work with you to mitigate the tax consequences of the new laws on your sale or purchase.

