# Asset Deal vs Stock Deal Summary

| | Asset Deals | Stock Deals |
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| **Buyer** | Can cherry pick which specific assets and liabilities it wants<br><br>When a buyer acquires the target company's assets, the transaction occurs between the buyer and the target company (vs the target shareholders). | Buys the entire company (all assets and liabilties) |
| **Seller** | Seller is the corporate entity and seller remains the legal owner of the corporate entity<br><br>The target company can liquidate, dissolve, or otherwise cease to exist, such that the proceeds are distributed to the equity owners after the transaction is completed, or can choose to remain in existence.<br><br>The target company recognizes gain or loss on the difference between the sales price allocated to the assets (generally negotiated by the parties in the asset purchase agreement) and the tax basis of the assets on an asset-by-asset basis. | Seller is the shareholders and the target company remains in existence and intact after the transaction<br><br>The target company does not generally recognize any gain or loss from the sale of its stock. Instead, the shareholders recognize gain or loss on the difference between the selling price and their basis in the stock/equity interests. |
| **Complexity** | More complex and costly process for identification, valuation, and title transfer of individual assets | More straightforward and simple process |
| **Inside/Outside Basis and Taxes** | There are two types of tax basis: inside basis and outside basis:<br><br>The inside basis is the tax basis that a company has in its assets.<br><br>The outside basis is the tax basis that a shareholder (which could be corporate entity) has in the shares of a company.<br><br>In a taxable asset acquisition, the selling corporation is taxed on the excess of the purchase price over its inside basis in the assets sold, and the selling corporation's shareholders are taxed on the distribution of sale proceeds | In a taxable stock acquisition, the buyer acquires stock from the target company's shareholders, who are taxed on the difference between the purchase price and their outside basis in the target's stock |
| **Taxes** | Some capital gains and some ordinary income taxes<br><br>In an asset sale, sellers are subject to potentially higher taxes than in a stock sale<br><br>Most of the assets, including inventory, equipment, will result in ordinary income. Some items, such as goodwill, most real property (real estate), and any appreciation over the original cost of the equipment, will qualify as capital gains | Capital gains over outside basis. This is better for the seller, but the buyer doesn't get the future step-up amortization tax benefits. |
| **Basis / Step-Up** | Net asset value is stepped-up to FMV for both tax and book purposes for the acquirer which results in a tax amortization benefit (goodwill is amortized and tax deductable over a 15 year period) for the buyer. The amount that is stepped up is a function of the intangible asset PPA (purchase price allocation) which determines fair value for each asset and liability and assigns value to each | Transferred at carrying value and step-up for book purposes only (no tax amortization benefit)<br><br>Buyers may be deterred from a stock sale due to potentially undesirable tax outcomes because the tax basis of the target company's business assets do not get adjusted to fair market value. Rather, the buyer acquires the target company with the historical tax basis of its assets. As such, the buyer does not get the benefit of additional depreciation and amortization tax deductions on the appreciated value of the assets. Instead, the target company's depreciation methods and lives continue undisturbed. |
| **Liabilities** | A buyer in an asset deal does not generally inherits the target company's undisclosed liabilities and uncertain tax positions, as it cherry picks the assets and liabilities purchased | A buyer in a stock deal generally inherits the target company's undisclosed liabilities and uncertain tax positions |
| **Minority Shareholders** | Minority shareholders can effectively be forced to accept terms | Minority shareholders can slow down or complicate the deal |
| **Other Elections** | C-Corps face double taxation if they enter into an asset deal | Can elect a Section 338, where the stock sale is treated as an asset sale for tax purposes |
| **C - Corp Detail** | Potentially two layers of tax:<br><br>Corporate layer – Target recognizes a taxable gain or loss on the sale of assets.<br><br>Shareholder layer – Selling shareholders recognize a gain taxed as ordinary income if the target liquidates equal to the after-tax liquidating dividend less shareholders' basis in the stock.<br><br>The acquirer assumes a stepped-up cost (FV) basis in the target's net assets.<br><br>The acquirer allocates the purchase price to the acquired assets and liabilities for tax purposes in the same manner as it does for accounting purposes.<br><br>Double taxation also occurs with an S corporation if it was previously a C corporation, had built-in gains at the time of conversion, and the conversion occurred within five years of the transaction date. | A stock transaction is often highly desirable for the selling shareholders because it results in one layer of taxation (by the shareholders) and avoids double taxation that occurs with asset sales by C corporations. |
| **Section 338(h)(10) Election** | For tax purposes, the selling company is considered to have sold all its assets and is liquidated even though legally the selling company is still in existence.<br><br>Specifically, the following events are considered to have happened:<br><br>The buyer creates a new corporation (new target).<br><br>The new target buys the assets of the target corporation (old target).<br><br>The old target liquidates in the hands of the seller and final return.<br><br>Generally, there is only one level of tax imposed which is on the deemed asset sale. | Seller does not get tax deferral on the equity rollover<br><br>Section 338 election is where the buyer seeks to have a stock purchase treated as an asset purchase for tax purposes. Need to meet all the rules to qualify. Usually used for 100% acquisition of stock when you cant avoid making the election. |
| **F-Reorganizations**<br><br>https://velawood.com/what-is-an-f-reorganization/ | An F-Reorganization is typically used in order to restructure the Target entity and its assets prior to sale to a Buyer.<br><br>SELLER (TARGET/TARGET OWNER) BENEFITS INCLUDE:<br>•Avoiding obtaining legal consents or incurring transfer taxes to create a 100% owned subsidiary that owns some of the assets of Target<br>•The F-reorganization structure allows more flexibility than using options like an IRC Section 338(h)(10) election or an IRC Section 336(e) election. This includes the ability for the Buyer to structure the purchase price with a greater mix of cash and Buyer stock (rollover compensation).<br><br>SELLER DISADVANTAGES:<br>Increased legal and other costs to effectuate the pre-closing F-reorganizatiIncreased complexity of<br>•Increased legal and other costs to effectuate the pre-closing F-reorganization<br>•Increased complexity of the underlying transaction<br>•Risk of the F-reorganization and its validity is typically born by the Seller (even if the structure is requested by the Buyer). | An F-reorganization is a type of typically tax-free reorganizational structure that often involves a target company taxed as an S-corporation. The F-reorganization is so named because it involves a change in "form" of the target, while not changing the substance of the target for tax purposes.<br><br>BUYER BENEFITS INCLUDE:<br>Allows Buyer to get a step-up in the basis of the Target's assets at sale equal to the amount paid for the Seller's LLC interest, while still using an Equity Purchase Structure (reducing the number of consents needed)<br>Retains Target's operating history, creditworthiness, and other attributes<br>Reduces Buyer's risk (potentially) if there are concerns regarding Target's initial S-corporation election, including its validity or timing<br>Removes the need to terminate the Target's S-corporation election at closing<br><br>BUYER DISADVANTAGES:<br>The tax filings involved in the transaction will not be received until months after closing, creating unknown risks.<br>Transaction liability risks of an equity sale, even when structured this way, are still usually higher than an asset sale transaction. |
| **Contracts** | Contacts need to be transfered or assigned. In an asset deal, you need to see if each and every contract is assignable, and if some are not, you need to contact and notify the related party for each contract. This can hurt the deal and take a lot of time as you notify and go to that related party. 3rd party support services (like Ontra) can help with contracts and assigning them quickly for a deal. | Contracts are within the legal entity and nothing special needs to be done in a stock deal. Consent or assignability not needed. |