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Goodwill. Who Owns it, the Individual or the Business?

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Goodwill. Who Owns it, the Individual or the Business?

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Tim O'Brien has over 45 years of experience in public accounting. In addition to his speaking, Tim is currently a senior consultant with the Star Chapman Group in Virginia, specializing in taxation of high net worth individuals and closely held businesses with clients located in many states throughout the United States.

Tim has also served as a tax partner and senior tax member for several CPA firms. He was an editorial adviser for the AICPA's Journal of Accountancy and served on several committees with the Virginia Society of CPAs.

Tim earned his Bachelor of Science degree in Accounting and Finance from Mount Saint Mary's University in Maryland. He is a member of the American Institute of Certified Public Accountants, the Alliance of Merger and Acquisition Advisors, and the American Bar Association.

Learning Objectives

Upon completion of this webinar, participants should be able to—

- Explain what goodwill is and some of the more common ways to compute it.
- List when is it personal and when is it the property of the business
- Describe the tax treatment of goodwill, ordinary or capital gain
- Identify some of the more relevant court cases in this area
- Become familiar with how to plan for the treatment of goodwill arising from the sale/purchase of a business

Business Goodwill

Definition of Goodwill

- That part of business value over and above the value of identifiable business assets.
- Regs. Sec. 1.197-2(b)(1) defines goodwill as "the value of a trade or business attributable to the expectancy of continued customer patronage," and that "[t]his expectancy may be due to the name or reputation of a trade or business or any other factor." In Rev. Rul. 59-60, the IRS describes goodwill thus:

Business Goodwill

In the final analysis, goodwill is based upon earning capacity. The presence of goodwill and its value, therefore, rests upon the excess of net earnings over and above a fair return on the net tangible assets. While the element of goodwill may be based primarily on earnings, such factors as the prestige and renown of the business, the ownership of a trade or brand name, and a record of successful operation over a prolonged period in a particular locality, also may furnish support for the inclusion of intangible value.

What it Means

- Business *goodwill* is a key intangible asset that represents the portion of the business value that cannot be attributed to other business assets.
- Put differently, business goodwill reflects the synergy among the various assets used by the business to produce income: in a well-run business the whole is greater than the sum of the parts.

Business Goodwill

What creates business goodwill?

Here are the some of the key factors that contribute to the creation of business goodwill:

- Going concern value
- Excess business income
- Expectation of future economic benefits

Business Goodwill

- *Going concern value* indicates the existence of business assets ready for use in producing business income. The value is created because a business can effectively apply its capital (financial resources and equipment), labor (employees), and coordination (management) to produce economic benefits for its owners.
- *Excess business income* implies the existence of earnings above a fair return on all the other business assets. The idea is that this excess income is due to business goodwill.
- Owners may believe that the business has additional value because they see it as being able to create new products and services, attract new customers, and acquire or merge with other businesses.

Business Goodwill

Types of business goodwill

For the purposes of small business valuation, you may be interested in these types of business goodwill:

- Institutional goodwill
- Professional practice goodwill

Institutional goodwill is associated with the business, its position in the marketplace and its ability to effectively serve its customers.

Business Goodwill

- Professional practice goodwill, as the name implies, is associated with professional practices such as doctors, lawyers, CPAs, architects, engineers and other professional services. Unlike business goodwill, the professional practice goodwill has two components:
  - Practitioner goodwill
  - Practice goodwill
- Practitioner *goodwill* relates to the skill and reputation of the individual professional practitioner.
- Practice *goodwill*, much like the business goodwill, arises from the professional practice itself, its institutional reputation, location, track record and operating procedures that make it an effective service provider that can produce superior income.

Business Goodwill

Accounting view of business goodwill

- From the accounting perspective, business goodwill is generally recorded only if it is acquired as part of a business or professional practice purchase.
- The typical way the accountants handle business goodwill then is by subtracting the fair market value of the business tangible assets from the total business value.
- Note that this definition of business goodwill captures all intangible business assets, not just the goodwill.

Business Goodwill

Economic view of business goodwill

- A quantitative view of business goodwill adopted by the economist is that it equals the capitalized value of the business earnings in excess of the fair return on all the other business assets, both tangible and intangible.
- This view seeks to establish the value of all identified business assets by allocating a portion of the business income to them.
- The remaining or excess earnings are then considered to be due to business goodwill.

Business Goodwill

Situations that may require valuation of business goodwill:

- In most business valuation situations the value of the entire business is determined. There are some situations, however, when you may find the knowledge of business goodwill useful.
- Business purchase price allocation. Asset-based business valuation methods require that the value of individual assets be estimated. This facilitates the business purchase price allocation among the various assets acquired as part of a business purchase. Accurate purchase price allocation may be useful from both the legal and tax perspectives.

Business Goodwill

Goodwill financial reporting.

- Under the Financial Accounting Standards Board (FASB) Statement 142 (Goodwill and Other Intangible Assets), acquired business goodwill is not amortized.
- Instead, a two step goodwill impairment test is used, repeated at least annually.
- The first step determines if business goodwill impairment is present.
- If so, the value of business goodwill is estimated in order to measure the amount of goodwill impairment which is recorded as a loss.

Business Goodwill

Damage analysis.

- In cases of contract breach, intellectual property infringement, or similar actions, the business may suffer.
- One way to measure the degree of damage is to determine the reduction in the business goodwill due to the action.

Business Goodwill

Business merger or spin-off.

- If two businesses merge, equity ownership in the new entity needs to be allocated among the business owners.
- One way to do this is in relative proportion to the assets being contributed.
- Business goodwill is one of these assets. A similar situation occurs when a single business or professional practice is split up or spins off a new company.

Business Goodwill

Business reorganization.

- Business goodwill may need to be measured to determine if the business is worth more as a going concern or should be liquidated. Positive business goodwill indicates that the business value exceeds the value of its asset base.
- Financial solvency verification.
- From the lender’s perspective, the question often arises: Do the financing arrangements result in the company’s assets exceeding its liabilities? The value of business assets in this situation includes business goodwill.

Business Goodwill

How business goodwill is determined

- As with all intangible business assets, the value of business goodwill can be estimated using the methods under the Cost (Asset), market and income valuation approaches.

Business Goodwill

Cost approach to valuing business goodwill

- Here, the focus is to estimate the cost, in today's dollars, required to recreate the business goodwill. Under the component build-up method, you estimate the opportunity cost of lost income were the business to be rebuilt from scratch.
- Let's say it will take 3 years to build another business that will match the current business income. Let's further assume that your business will generate $300,000 each year in income. Then the present value of this income is the measure of your business goodwill.

Business Goodwill

Market approach to valuing business goodwill

- A common way to estimate business goodwill in an actual business sale is to subtract the total value of all identified assets from the cash-basis business purchase price.
- Note that deferred payments such as a seller's note or earnout should be discounted to their present value and then added to the cash components of the purchase price, such as the buyer's down payment.
- You can also use comparative business sale data of businesses sold in your industry to estimate your business goodwill as a percentage of the business sale price.

Business Goodwill

Income approach to valuing business goodwill

- This is the most commonly used approach to estimating the value of business goodwill. The most useful methods here are:
  - Total business value residual method
  - Capitalized excess earnings method
- Under the *total business value residual* method, the Discounted Cash Flow business valuation method is the preferred choice to determine the total business value. Business goodwill is then estimated as the difference between the total business value and the fair market value of all identified business assets.

Business Goodwill

The Capitalized Excess Earnings method works as follows:

- Estimate the fair market value of all identified business assets.
- Determine a fair rate of return on these assets.
- Subtract the return from the total business earnings. The difference is the excess earnings.
- Capitalize the excess earnings to determine business goodwill. Correct choice of the capitalization rate is key.

Goodwill. Who Owns it?

- When a taxpayer sells a business in which his or her personal relationships with clients/customers are important to the purchasing entity and, after the sale, is employed by that entity, a question arises whether payments received by the taxpayer are for the taxpayer's future services or for the taxpayer's goodwill.
- Amounts received for goodwill result in capital gain, while payments for services result in ordinary income. The existence of goodwill is a question of fact determined on a case-by-case basis. See *Butler v. Commissioner*, 46 TC 28.

MacDonald Case (1944)

- The husband-and-wife taxpayers were the shareholders of a corporation primarily engaged in the insurance brokerage business. The husband was experienced in the insurance business, and the development of the corporation's business was due to his personal ability and relationships with customers. The MacDonalds liquidated their corporation and distributed all its assets-including goodwill-to the husband. The husband then set up a new insurance agency under the same name.
- The IRS argued that valuable goodwill passed from the corporation to the taxpayers when they liquidated the corporation and that, therefore, they had unreported taxable income.

MacDonald Case (1944)

- The Tax Court held, however, that no goodwill passed to the taxpayers since any goodwill of the business "was due to the personal ability, business acquaintanceship, and other individualistic qualities of [the husband]," and found that the corporation did not have any value beyond its tangible assets, since the husband's personal ability was not a corporate asset and there was not a contract or other agreement between the husband and the corporation for his future services.

Howard Corporation

- Dr. Larry Howard began practicing dentistry in 1972.
- In 1980, he incorporated his practice as the sole shareholder, officer, and director of Larry E. Howard, DDS (Howard Corp.). Also in 1980, Howard entered into an employment agreement and a covenant not to compete with Howard Corp. The covenant stated that for as long as he held stock in the corporation and for three years afterward, Howard would not in any capacity engage in, or hold any financial interest in, a competing dental practice within 50 miles of the corporation’s location in Spokane, Wash.
- All parties acknowledged that as sole shareholder, director, and officer of the corporation, Howard could modify or cancel the employment agreement at any time and that he was bound by the terms of the agreement and covenant not to compete with Howard Corp. through the relevant period of this case.

Howard Corporation

- In 2002, Howard and Howard Corp. sold the practice to Dr. Brian Finn and his personal service corporation, Brian K. Finn, DDS, PS (Finn Corp.). In the asset purchase agreement, Howard was allocated $549,900 for his personal goodwill and $16,000 for consideration regarding a covenant not to compete with Finn Corp. Howard Corp. received $47,100 for its assets.
- Howard and his spouse filed a 2002 federal income tax return reporting $320,358 as long-term capital gain income from the sale of goodwill to Finn Corp. In an audit of Howard’s 2002 return, the IRS recharacterized the sale of the goodwill as that of a corporate asset and treated the amount received by the Howards from the sale to Finn Corp. as a dividend from Howard’s professional service corporation of $320,358. The Howards paid the full amount the IRS charged and then filed a claim for refund of that amount, with interest from the payment date.

Howard Corporation

- In deciding in favor of the IRS, the district court found that the goodwill was a corporate asset of Howard Corp., and therefore the Howards were not entitled to the refund that they sought, noting the noncompetition agreement's terms. "Therefore, even if the goodwill had belonged to Dr. Howard personally, it likely would have little value, because Dr. Howard could not have practiced within a fifty mile radius from his previous practice location for at least three years beyond the date of the Howard Corporation dissolution," the court stated. "Those prohibitions would likely discourage patients from following Dr. Howard to a new location."

H&M, Inc.

- In *H&M, Inc.,* the taxpayer owned an insurance agency in a small market and made a name for himself as the top agent in the area. His customers came to his agency because of his personal name and reputation.
- Taxpayer later, in a purchase agreement, sold his agency to a bank, that had created an insurance agency of its own, and also, in an employment agreement, agreed to work with the bank's insurance agency for a number of years.

H&M, Inc.

- The IRS argued that part of taxpayer's compensation was in fact part of the purchase price for the taxpayer's agency and that a proper allocation of the funds received under the agreements would, in part, account for the goodwill of taxpayer's agency.
- The Tax Court found that the goodwill in question was personal to the taxpayer and that no agreement between him and his agency prevented him from taking his goodwill elsewhere; therefore, taxpayer's compensation was not part of the purchase price for his agency.

Martin Ice Cream Co.

- In *Martin Ice Cream Co.,* the corporation was in the business of distributing ice cream to supermarkets, grocery stores, and food-service accounts.
- Arnold, who owned 51% of the corporation, had an oral agreement with an ice cream company that the corporation would act as a distributor of its ice cream.
- Arnold also had longstanding relationships with the owners and managers of supermarket chains.

Martin Ice Cream Co.

- Arnold did not have an employment contract with the corporation nor did he sign a covenant not to compete. The Tax Court held that the valuable intangible assets embodied in Arnold's oral distribution agreement with the ice cream company and his relationships with the supermarket chains were not owned by the corporation.
- Rather, Arnold was the sole owner of these intangibles and made them available to the corporation by working for it.
- Thus, the value of the corporation's goodwill was zero.

Norwalk

- In *Norwalk,* the IRS argued that a professional accountancy corporation owned approximately $580,000 of intangibles when it liquidated.
- However, the Tax Court concluded that the goodwill associated with the practice was not a component of the corporation's value but rather was a personal asset of the shareholders.
- Further, the corporation's client list was held to have no value in the hands of the liquidating corporation, because no non-compete agreement with the corporation was effective against the shareholders.

Norwalk

- Without such a non-compete agreement, the shareholders were free to take the corporation's clients and serve them individually, rendering the client list valueless to the liquidating corporation.
- (As a practical matter, it was the personal abilities and characteristics of the individual accountants that mattered to clients, not the existence of the corporation.)

Norwalk

- The court noted the importance of the lack of a noncompetition agreement between the shareholder-employees and the corporation by stating:

  There is no salable goodwill where, as here, the business of a corporation is dependent upon its key employees, unless they enter into a covenant not to compete with the corporation or other agreement whereby their personal relationships with clients become property of the corporation.

Goodwill. Who Owns it?

Kennedy, Mack & Parker

- James P. Kennedy was the sole shareholder of his employee benefits consulting business, KCG International Inc., in addition to being one of its two full-time employees.
- During 2000, Mack & Parker Inc. (M&P) offered to purchase the consulting business and have Kennedy join M&P as a consultant.
- M&P offered Kennedy a percentage of the annual income generated from KCG clients over the next five years.
- Later in 2000, the parties executed a final purchase-and-sale agreement that consisted of a goodwill agreement, consulting agreement and an asset purchase agreement.

Goodwill. Who Owns it?

- Under the agreements, Kennedy would work without salary for M&P to continue providing services to his former clients for the next five years, after which he planned to retire. Also, under the agreements, Kennedy and KCG would not compete with M&P for five years. M&P would make a lump-sum payment of $10,000 to KCG and annual payments to KCG and Kennedy for five years.
- The annual payment amounts would depend on revenue received from Kennedy's former clients and were allocated 75% to Kennedy in exchange for the "personal goodwill" associated with his customer relationships, his know-how and his promise not to compete or otherwise engage independently in employee benefits consulting.
- The other 25% was allocated to KCG for its client list and noncompete agreement. After about 18 months of working under this arrangement, Kennedy felt he was undercompensated and negotiated a salary in addition to the payments.

Goodwill. Who Owns it?

- Pursuant to the purchase agreement, Kennedy received $176,100 and $32,758 from M&P in 2001 and 2002 respectively, and reported each amount as long-term capital gain from the sale of goodwill on the joint returns he and his wife filed.
- Kennedy had unrelated capital losses that offset all of the 2002 gain and all but $2,442 of the 2001 gain.
- The IRS recharacterized the capital gains in both years as ordinary income and assessed deficiencies and accuracy-related penalties totaling $87,989 against Kennedy and his wife on their joint returns. The Kennedys petitioned the Tax Court for relief.

Goodwill. Who Owns it?

- The Kennedys argued that the Tax Court's holding in *Martin Ice Cream Co. v. Comm.* (110 TC 189), controlled and that payments to Kennedy were for goodwill he owned. In Martin, the court held that payments received by a corporation's sole shareholder for his supermarket relationships and distribution rights were owned by him, not the corporation, absent any agreement that transferred those rights to the corporation.
- However, the court stated its holding in Martin did not apply to Kennedy, since in Martin the court decided only whether the payments were taxable to the corporation, and did not address whether the payments for the rights were ordinary income or capital gain for the shareholder.

Goodwill. Who Owns it?

- In this case, the court held that the payments received by Kennedy were not for goodwill, since he worked for M&P for five years, received little compensation for his services for 18 months, and agreed not to compete with M&P during the five years
- The court stated it did not need to distinguish between payments for Kennedy's services and those for his promise not to compete, since both were ordinary income.
- Furthermore, the court held the payments were subject to self-employment tax.
- However, the court denied the penalties, noting the Kennedys had provided accurate and complete information to their longtime CPA tax preparer and relied upon his professional advice.

What Does it All Mean?

- This area is still evolving, but these cases illustrate that intangible assets at the corporate level may be valued at zero in a professional practice where the controlling shareholders have no non-compete agreements, employment contracts, or similar arrangements with the corporation.
- Because built-in gain is limited to the excess of an asset's fair market value at the date the S corporation election becomes effective over its adjusted basis at that date, intangibles and other corporate assets with no value at the date the S corporation election becomes effective will not be subject to the built-in gains tax.

Bross Trucking

- Bross, a successful construction businessman, had established close, personal relationships with his primary customers. Additionally, Bross was extremely knowledgeable about the trucking industry because of his many years of experience. To that end, customers sought these personal traits through their relationships with him, which led directly to business for Bross Trucking. As a result, the Tax Court determined personal goodwill existed through these relationships.
- The court in *Bross Trucking* held that any existing goodwill from Bross's relationships was personal goodwill.

Bross Trucking

- A significant factor in *Bross Trucking* supporting the position that it was personal goodwill was that the corporation clearly lacked its own goodwill. The corporation had an impending suspension from various regulatory infractions, causing it to face bankruptcy. Further, the impending suspension caused customer uncertainty and business interruptions that impaired business. The negative image of Bross Trucking was so strong that Bross's three sons started a new trucking business using many of the same vehicles but eliminating the Bross Trucking logo from the vehicles. The Tax Court identified this as the "antithesis of goodwill" and concluded that while the business may have had corporate goodwill at some point, any remaining goodwill was not the corporation's, but instead stemmed from Bross's relationships with his customers. Unlike many situations involving claims of personal goodwill, the nonexistence of corporate goodwill in this case was clear.

Bross Trucking

- Bross never entered into an employment contract or a noncompete agreement. He was free to leave the company and take his relationships with him if he chose to compete against the business. The court stated that "[a]n employer has not received personal goodwill from an employee where an employer does not have a right, by contract or otherwise, to the future services of the employee." As a result, the lack of those agreements allowed the Tax Court to conclude Bross did not transfer any goodwill to the corporate entity.

Goodwill. Who Owns it?

- Personal goodwill can be present when the owner’s reputation, expertise, skill, knowledge, and relationships with customers are critical to the business’s success and value.
- Personal goodwill may be deemed an asset of the corporation where shareholders have transferred the goodwill to the corporation through noncompetition, employment, or other agreements with the corporation.

Goodwill. Who Owns it?

- A sale of corporate assets and personal goodwill should be carefully planned and executed to establish that personal goodwill exists and that it is being sold in a separate transaction from the sale of the assets of the corporation.

Goodwill. Who Owns it?

The Essentials

- A taxable sale of assets by a C corporation, an S corporation with earnings and profits, or an S corporation subject to the built-in gains tax (each a "target corporation"), followed by a liquidation or distribution of the sale proceeds to shareholders, normally results in a double tax at the corporate and shareholder levels.

Goodwill. Who Owns it?

- While double taxation can be avoided if the transaction is structured as a stock deal, with the shareholders selling their stock in the target corporation, a purchaser may prefer an asset deal for at least three reasons, including:
- In an asset deal, the purchaser gets a stepped-up, fair market value basis in the acquired assets equal to the price paid and any liabilities assumed (the purchase price), and will therefore get higher depreciation and amortization deductions than the target corporation was enjoying.
- Unlike in a stock deal, which takes the target corporation with all its liabilities, known or unknown, an asset deal allows the purchaser to select which liabilities, if any, it will assume.
- Similarly, an asset deal allows the purchaser to select which assets it will purchase, rather than, as in a stock deal, all of the target corporation's assets, wanted or unwanted.

Goodwill. Who Owns it?

- Few strategies are available for avoiding the double tax cost from a taxable sale of assets. The most frequently used strategies involve payments directly to the shareholders under employment, consulting, and noncompete agreements.
- While payments to the shareholders under those agreements will be taxed only once, at the shareholder level, those payments will constitute income to the shareholders taxable at ordinary income tax rates, and the employment and consulting payments will be subject to employment taxes as well.
- Another strategy involves a shareholder's sale of the personal goodwill associated with the operation of the target corporation. For the strategy to work, it must be demonstrated that goodwill in fact exists, that it is both salable and transferable to a purchaser of the target corporation, and that it is personal goodwill owned by a shareholder rather than business goodwill owned by the target corporation itself.

Goodwill. Who Owns it?

- A shareholder's sale of personal goodwill creates significant income tax benefits for the shareholder of the target corporation.
- A sale of personal goodwill, if respected by the IRS, creates long-term capital gain to the shareholder, taxable at up to 23.8% (maximum capital gain rate of 20%, plus the 3.8% net investment income tax) rather than ordinary income to the target corporation, taxable at up to 35% plus an additional tax of up to 23.8% on the remaining balance of the purchase price distributed by the target corporation to the shareholder, leaving the shareholder with potentially approximately 76 cents rather than 49 cents for every dollar of value for goodwill after federal income tax.

Goodwill. Who Owns it?

- In other words, the income tax is potentially more than two times (51% versus 23.8%) as much if the payments are made first to the target corporation rather than to the individual for a capital asset.
- And, if the choice is between personal goodwill and noncompetition payments to the shareholder, the difference is taxation at a federal rate of up to 23.8% for personal goodwill, versus as much as 39.6% for noncompetition payments.

Goodwill. Who Owns it?

- In some early tax cases (already discussed and summarized again shortly) involving the liquidations of insurance agencies, the courts determined the goodwill was personal rather than institutional because of the owner's personal business abilities and relationships with customers.
- In more recent cases, courts have found that absent binding noncompetition agreements, where personal contacts and relationships are important to the business, personal goodwill can exist separate and apart from, or to the exclusion of, business goodwill.

Goodwill. Who Owns it?

- This part of the law has not changed much. In the 1998 decision of *Martin Ice Cream Co.,* the Tax Court held that a corporation could not be taxed on payments made to its controlling shareholder for his customer relationships. In so ruling, the court stated:

  This Court has long recognized that personal relationships of a shareholder-employee are not corporate assets when the employee has no employment contract with the corporation. Those personal assets are entirely distinct from the intangible corporate asset of corporate goodwill.

Goodwill. Who Owns it?

- In *Norwalk,* another 1998 Tax Court decision, the court recognized a shareholder's personal goodwill in connection with a liquidation of a corporation engaged in the practice of accounting.
- Holding in favor of the shareholders, the court stated that it had no doubt that most, if not all, of the clients of the corporation would have followed the accountant who serviced them if the accountant left the corporation, and therefore it was "reasonable to assume that the personal ability, personality, and reputation of the individual accountants" are what the clients sought.

Goodwill. Who Owns it?

- In so finding, the court decided that these characteristics did not belong to the corporation as intangible assets.
- Central to the court's decision, the court first found that the termination of the employment agreements with the corporation meant that the shareholders had no obligation to continue their connection with the corporation.
- Second, the court found that the shareholders were not prevented from competing with the corporation.
- Third, the court found that if the shareholders had left the corporation, their clients would have followed. And, finally, the court attributed no value to the corporation independent of the accountants themselves.

Goodwill. Who Owns it?

- In subsequent decisions, courts have followed *Martin Ice Cream* and *Norwalk* in recognizing that the value of goodwill attributable to the personal abilities and relationships of the shareholders and employees of a corporation are not the property of the corporation absent some contractual obligation such as an employment agreement or noncompetition agreement that transfers these intangible assets to the corporation.

Goodwill. Who Owns it?

Transfers of Goodwill at Acquisition

- Goodwill must be both salable and transferable, and in the absence of a covenant not to compete with the purchaser, there can be no transfer of goodwill.
- In *Flower*, the Tax Court so held, pointing to the absence of a covenant not to compete as evidence that personal goodwill was not transferred.
- In *Norwalk*, the Tax Court found that no goodwill was transferred to the buyer and stated:
- We have held that there is no salable goodwill where, as here, the business of a corporation is dependent upon its key employees, unless they enter into a covenant not to compete with the corporation or other agreement whereby their personal relationships with clients become property of the corporation.

Goodwill. Who Owns it?

- Planning for the sale of personal goodwill should begin well before a sale of the target corporation is contemplated.
- All corporate records should be carefully reviewed to ensure that the shareholders have not transferred ownership of their personal goodwill to the target corporation, by a capital contribution or by entering into long-term employment or noncompetition agreements with the target corporation.
- Of course, if any such agreements exist, the adviser should consider whether they can be effectively terminated.

Goodwill. Who Owns it?

- At the inception of a contemplated asset sale transaction, it should be made clear to the prospective buyer that the target corporation owns its tangible assets, while the shareholders own the personal goodwill associated with the business operations of the target corporation.
- Any confidentiality agreement of the prospective buyer should be addressed to both the target corporation and its shareholders as sellers.

Checklist for Selling a Business

- Names of seller, buyer, and business
- Background information
- Assets being sold
- Purchase price and Allocation of Assets
- Covenant Not to Compete
- Any adjustments to be made
- The Terms of the Agreement and payment terms
- List of inventory included in the sale

Checklist for Selling a Business

- Any representation and warranties of the seller and buyer
- Determination as to the access to any business information
- Determination as to the running of the business prior to closing
- Contingencies
- Fees, including brokers fees
- Date of closing

Q&A

We will be happy to take questions at this time.

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