Mergers and Acquisitions - Analyzing Retirement Plans

Business mergers and acquisitions are a way of life in today's economic environment. From phone companies and banks, to equipment manufacturers and dealerships, business mergers and acquisitions will continue to make news in the business world for many years to come.

Steps Involved in a Merger or Acquisition

The merger and acquisition process involves several critical steps. In an April 2005 *Retailer* article titled, "Becoming a Multi-Location Business," Andy Goodman outlined six steps involved in a merger or acquisition. These include:

1. Establishing a dialog with the owner(s) of the business you would like to merge with or purchase.
2. Understanding the manufacturer contracts that may be involved.
3. Valuing your business and the business you want to acquire.
4. The deal itself (letter of intent, confidentiality agreement, purchase agreement and closing).
5. Employee issues.
6. Determining management of the new multi-location business.

Step number five, employee issues, involves analyzing the benefit and retirement plans provided to employees of the new organization. According to R. David Wentz, CEO, Tax Favored Benefits, Inc., "Conducting a compliance review for each plan of the seller, purchaser or merging companies is a critical part of the merger/acquisition process." The compliance review compares the plan design, provisions, objectives, investments, administration, communication, education, contribution amounts, and other costs for the seller, purchaser or merging companies.

Wentz recommends conducting this review early in the process. "Do not delay consideration of the retirement plan(s) until the very last minute," he stressed. "When the deal looks good with the manufacturer, you have your financing arranged, and are gathering data, it's a good time to review the benefit information so you understand whether or not you have any liability before signing the final deal."

"When we merged our businesses, we all had different benefit plans and Tax Favored Benefits helped us come up with a plan that met most of our employee needs," stressed Mike Kongs, of Oregon Trail Equipment, with five locations in Nebraska and Kansas. "They made sure we met all of the rules and regulations necessary to keep our new plan legal."

"It is important to determine the effects on retirement plans if the successor company is considered to be a 'controlled group' or 'affiliated service group.' If this is the case, similar plan provisions may need to apply to all employees," explained Wentz. On the other hand, if the successor plan is considered to be a 'plan merger,' he feels it is important to determine what plan provisions must be retained under the I.R.S. anti-cut back doctrine.

Methods to Consider

Wentz and his staff at Tax Favored Benefits, Inc. consider several methods when reviewing retirement plans for businesses involved with a merger or acquisition. Following is a brief look at these methods.

Method #1

If the new owner does have an existing plan, merge the seller's plan into the buyer's existing plan. (Whatever option is chosen, a restatement of the existing plan must be titled to comply with the GUST amendments and changes caused by the EGTRRA tax law.)

Method #2

If the new owner does have an existing plan, merge the seller's plan and buyer's plan into a common plan with new provisions that also meet the "anti-cut back" requirements.

Method #3

Terminate the plan and distribute all assets to plan participants. Every participant would be considered 100 percent vested no matter how many years of employment. <u>Note: This method could result in some valued employees deciding to leave the new entry.</u>

Method #4

If the new owner does not have an existing retirement plan and the selling employer does, have the new owner retain the existing plan and the new corporation act as the new plan sponsor. The existing plan's vesting schedule would remain in place and there would be no distribution unless an employee terminated employment, in which case the distribution would be subject to the existing vesting schedule.

Method #5

If the new owner does not have an existing retirement plan and the selling employer does, terminate the existing plan, distribute all assets, and have the corporation establish a new plan. <u>Note: This could also result in valued employees leaving.</u>

"Once the compliance review is completed, we make recommendations as to what the business should do based on their objectives," said Wentz. Once the best method is determined, he added that it is important to establish the "final" successor retirement plan(s). This involves completing and signing the appropriate plan documents, corporate resolutions, administrative agreement, investment agreements and tax filings to establish the successor retirement plan(s).

"We have a knowledgeable service representative explain and enroll the successor plan with plan participants at each and every location as soon as possible," stressed Wentz. "We feel it's important to visit all of the locations and to provide a high level of service for all participants."

"Tax Favored Benefit's quality staff focuses in specific areas, which allows individuals to become professionals within that group. As we merged our plans, they were consistently looking for ways to benefit not only our business, but, most importantly, our employees," stressed Curt Lang with Tri-County Implement in DeWitt, Iowa and Broshar Implement in Kanawha and Woolstock, Iowa.

He added, "They offer us top shelf customer service with a quick response time to any question or issue. Our customers expect prompt/courteous service when they have an issue with one of our products, and I expect nothing less of a vendor/service provider when it comes to dealing with issues that affect our employees. Tax Favored Benefits does just that."

"I appreciate Tax Favored Benefit's personal attention and detailed approach to business. Whenever I have a question, they get back to me in a timely manner," added Erv Eisenmenger of West Point Implement in West

Point and Columbus, Neb. and Mo. Valley Implement in Missouri Valley, Iowa. “They also have knowledge of the farm equipment business, so they know what we’re all about.”