



# Mergers and Acquisitions

What Happens to the Retirement Plan?

# Agenda

- Types of Transactions
- Service Crediting Rules
- Examples
- Key Takeaways



# Types of Transactions

## **Asset Sale**

Selling Company sells some or all its “stuff” to the Buyer. This can be a book of business, an office or a certain division of the company. The Seller maintains their current ownership.

## **Stock Purchase**

Selling Company sells the entity to the Buyer. Here, the ownership transfers from the Seller to the Buyer.

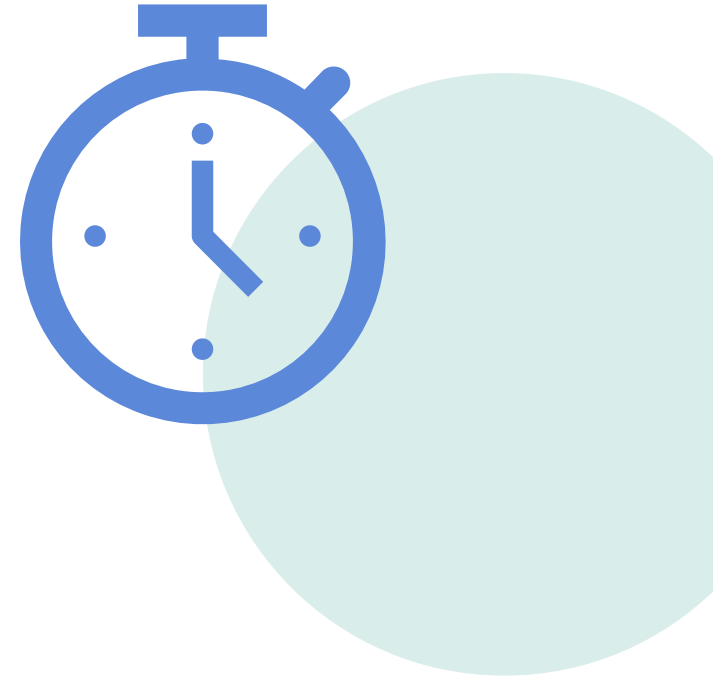
## **Merger**

Two companies combine to make one company. New company now owns all that the previous companies owned before the transaction.



# Timing is Everything

Please contact your Retirement Plan Consultant if you are either a buyer or seller at any point. You should contact us prior to the transaction as there can be different implications depending upon the timing of when the plan issues are addressed.



# Service Crediting Rules

## **Asset Sale:**

- Employees of the Seller are now terminated employees. Plan participants are eligible to take distributions from the Seller's retirement plan.
- The seller's employees would be new hires of the Buyer on the date of the transaction and would be eligible for the Buyer's retirement plan according to its eligibility terms.
- The Buyer may choose to amend their plan to credit the employees' prior service with the Seller. This service can be for eligibility, vesting or both.



# Service Crediting Rules

## **Stock Purchase:**

- Employees are typically treated as employees with continued service from the Seller to the Buyer.
- What happens with the retirement plans is up to the Buyer in this case?
- Options include:
  - Terminating the Seller's Plan
  - Merging the Seller's Plan into the Buyer's Plan
  - Keeping both Plans and having each company maintain their Plans.



# Service Crediting Rules

## **Merger:**

- The Surviving Company becomes responsible for all plans sponsored or adopted by either company before the transaction.
- Employees are generally considered to have continued service with the New or Surviving company
- The rules here are very similar to a stock purchase – the surviving company can decide what to do with all retirement plans.



## Example I: Simple Asset Sale

**Salt and Spice Co.** has several divisions. One of these divisions is not really part of their core business, so they sold their small Sugar division to **Sweets Galore, Inc.** on 09/30/2020.

- Salt and Spice Co. maintains their current ownership of the other divisions.
- The Sugar division employees are terminated from Salt and Spice Co. and start their first day employed by Sweets Galore, Inc. on 9/30/2020.





## Example I: Simple Asset Sale

Considerations for Salt and Spice Co:

- The Sugar division employees are now terminated employees and are eligible to take distributions from the Salt and Spice Co. 401(k) Plan.
- Is the Sugar division big enough to constitute a **Partial Plan Termination**?

Sweets Galore, Inc. has simply hired a group of new employees. They can amend their plan to credit these employees for their service with Salt and Spice Co., or the new employees can be subject to the Sweets Galore, Inc. 401(k) Plan eligibility requirements.



## Example II: Simple Stock Purchase

Bert, Inc. buys 100% of the stock of Ernie, Inc. on 10/01/2020.

- Bert, Inc. has a 401(k) Plan with Quarterly Entry Dates
- Ernie, Inc. has a 401(k) Plan with Monthly Entry Dates

### **What happens if the plans are not modified in any way?**

- We have to look at the plan provisions of each.
- It could be the case that all employees are eligible for both plans – which is not typically what we want.
- There is a possibility of including a **Transition Period** but this must be in place *prior to* the transaction.



## Example II: Simple Stock Purchase

Bert, Inc.'s 401(k) Plan excludes acquired employees during this transition period.

This transition runs from the date of acquisition until the last day of the plan year following the year of the transaction.

10/01/2020 until 12/31/2021

- Acquired Employees will become eligible for the Bert, Inc. 401(k) Plan as of 1/1/2022 or earlier.
- Bert, Inc. can count all service with Ernie, Inc., or just the service under the Controlled Group – which would be from 10/01/2020 on.
- Use this period to determine what happens with the Ernie, Inc. 401(k) Plan.



## Key Takeaways

- Make sure Plan Provisions are known *before* the transaction
- Document planning is Key
- Communication is Key to all parties. Let your Retirement Plan Consultant *be* your consultant!



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Questions?

 DEFINITI

29<sup>th</sup> Annual  
**401(k)**  
**CLASS**



## Want to Know More?

Contact your **Definiti Retirement Plan Consultant**  
to learn even more.

