# What Tax Counsel Needs to Know about Working with a Valuation Specialist

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*Tax counsel often have to retain, and work with, a valuation specialist related to a gift tax, estate tax, or generation-skipping transfer tax controversy. This statement is particularly true if the transfer involves a private company, a private business ownership interest, a closely held security, or an intangible asset. This discussion provides guidance to tax counsel related to selecting, working with, and defending the work of the valuation specialist.*

## Introduction

The value of a private company, company ownership interest, security, or intangible asset is often an issue in gift tax, estate tax, generation-skipping transfer tax, and other transfer tax matters. These issues may arise in a tax planning, tax compliance, or tax controversy context. In such instances, the taxpayer or the taxpayer's tax adviser may retain a "valuation specialist" (or "specialist") to develop—and report on—the value of the subject business interest.

This discussion focuses on valuation-related tax controversies. And this discussion assumes that tax counsel is assisting the taxpayer (e.g., a private company owner/operator) with the tax controversy matter. Therefore, this discussion assumes that tax counsel retains a valuation specialist to serve as either a consulting expert or testifying expert in the transfer-tax-related controversy matter.

This discussion summarizes what tax counsel needs to know to retain and work with the valuation specialist during a tax controversy engagement.

Counsel may look for a valuation specialist who has specialized experience and expertise in one or more of the following:

1. Valuing private companies in the subject industry segment
2. Conducting valuations of the subject valuation interest (e.g., S corporation stock, family limited partnership ("FLP") ownership interests, restricted public stock, contract rights, etc.)
3. Conducting analyses for the specific purpose that is relevant to the subject dispute (e.g., gift tax, estate tax, charitable contribution deduction, etc.)
4. Providing an expert report and providing testifying expert services at deposition and/or at trial, if relevant

This discussion provides practical guidance to tax counsel involved in such taxation, audit, appeal, or litigation matters with respect to selecting and working with a valuation specialist. This discussion summarizes the typical development procedures and the typical reporting procedures related to the valuation of a private company, business ownership interest, security, or intangible asset. And, this discussion summarizes the professional standards and practices that specialists typically follow as part of the valuation process.

## Selecting the Valuation Specialist

Tax counsel should exercise due diligence in selecting the specialist. Some of the selection criteria may include the following:

1. The qualifications (experience and expertise) of the valuation firm
2. The qualifications (experience and expertise) of the individual specialist
3. Any prior relationships of the valuation specialist with the subject company

### Considerations regarding the Valuation Firm

There are many types of professional firms that provide valuation services, including public accounting firms, industry specialist consulting firms, valuation groups within general financial advisory services firms, business valuation firms, forensic analysis firms, economic consulting firms, and many others.

Some of these firms are very small, including sole practitioners and small professional practices. Some of these firms are quite large, with dozens of offices and hundreds of practitioners.

Some firms specialize in the analysis of certain types of business ownership interests, such as private companies, private business ownership interests and securities, professional practices or licenses, or intangible assets and intellectual property. Some firms specialize in the analysis of certain industries or industry segments.

Some firms specialize in controversy-related forensic analyses. These firms primarily specialize in providing forensic-related consulting expert services and testifying expert services. In contrast, some firms provide valuation services for a broad variety of purposes, including transactions, financings, taxation, financial accounting, corporate planning—as well as tax-controversy-related purposes.

The qualifications of each valuation firm can be demonstrated in different ways. Some tax counsel may prefer firms that specialize in performing valuations for a specific purpose (e.g., transfer tax disputes, income tax disputes, property tax disputes). Other counsel may prefer firms that are more generalist in nature—that is, firms that do not focus exclusively on engagements for one particular purpose.

Nonetheless, the selected firm should be able to demonstrate its professional experience related to:

1. conducting valuation analyses for the subject taxation-related purpose and
2. conducting valuation analyses that can withstand a contrarian review (e.g., tax audit, appeals officer review, litigation cross examination).

Tax counsel may be particularly interested in the firm's valuation experience:

1. in the subject company's industry segment and
2. in the subject taxpayer's valuation issue (e.g., C corporation stock, S corporation stock, nonvoting stock, preferred stock, restricted public stock, limited liability company units, FLP interests, contract rights, intellectual property, etc.).

### Important Issues in the Valuation

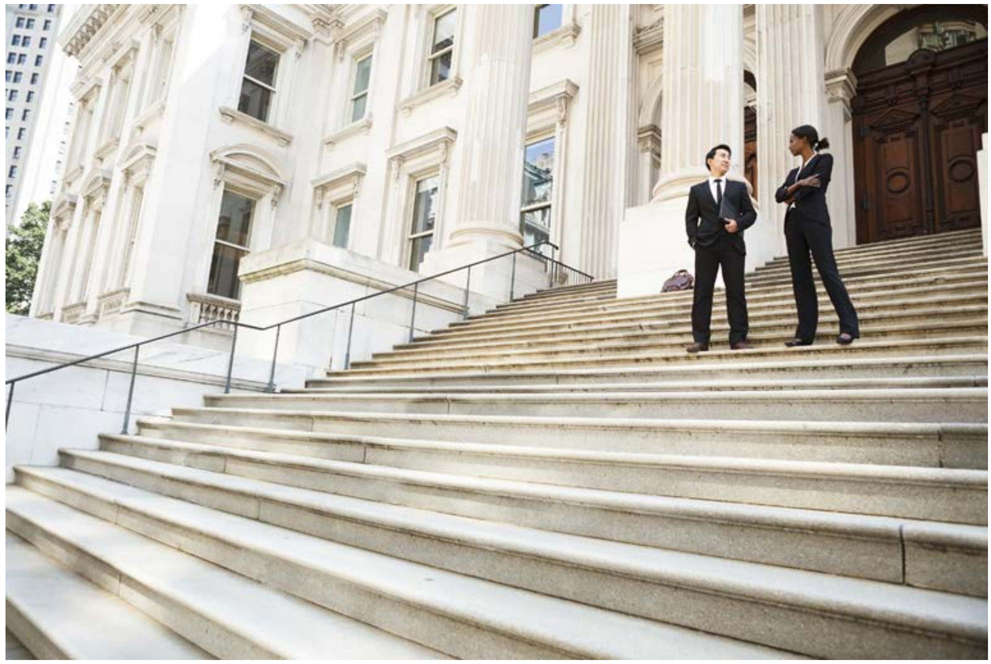
There are relatively few areas that distinguish company valuations prepared for one purpose from company valuations prepared for another purpose. However, the valuation firm—and the selected valuation specialist—should be familiar with such differences. For example, the following issues may be important in the business, security, or intangible asset valuation:

1. The appropriate standard of value and the appropriate premise of value based on the purpose of the analysis; that is, the valuation standard and the valuation premise typically will be different for analyses performed for transaction, taxation, accounting, litigation, or other purposes
2. The identification and valuation of any personal goodwill component related to the private company owners
3. The measurement of any value appreciation (or depreciation) between two dates (e.g., the date of formation of an FLP and the date of the transfer of the FLP partnership interests)
4. The amount of any extraordinary (i.e., above the industry average) business, security, or intangible asset value appreciation during a specific time period
5. The valuation of the private company on multiple dates (e.g., before the breach of a noncompete agreement, after the breach of a noncompete agreement, the breach of contract trial date, etc.)
6. The use of forensic accounting procedures—to identify unreported assets, unrecorded

liabilities, company-paid personal expenditures, and the like

7. The identification and quantification of valuation adjustments (i.e., discounts and premiums) related to lack of marketability, lack of control, lack of voting rights, key person dependence, and so forth

8. The identification and quantification of any buyer-specific synergistic or strategic value increments that may be a component of the business transaction price for a transaction that occurred before or after the taxation-related valuation date



## Considerations regarding the Valuation Specialist

The professional qualifications of the individual valuation specialist are also important. The valuation specialist will provide consulting expert services to counsel. And, the valuation specialist may also provide testifying expert services. In addition, the specialist may also provide settlement negotiation, audit support, and other litigation support services. Therefore, the professional qualifications of the individual specialist should be able to:

1. impress a tax auditor, appeals division officer, or judicial finder of fact and
2. withstand a rigorous contrarian scrutiny (from, say, the Internal Revenue Service or Department of Justice legal counsel).

While assessing the professional qualifications of the valuation specialist, tax counsel may inquire about that specialist's personal experience in conducting valuations:

1. related to the subject type of company ownership interest;
2. in the subject company's industry segment; and
3. within a negotiation, audit, or other contrarian environment.

In terms of education, many valuation specialists have formal education in finance, accounting, and/or economics. In the same respect, many (but not all) valuation specialists hold one or more professional valuation credentials.

There is no statutory, judicial, or regulatory requirement that a specialist hold any particular valuation-related professional credential. Many industry consultants, economists, college professors, forensic accountants, and other types of professionals provide valuation services—without having earned a valuation-related professional credential.

Nonetheless, counsel should be aware of the valuation professional organizations ("VPOs") that offer valuation-related training, examination, credentialing, and continuing education programs. Some of the professional credentials—and the related VPOs—in the business valuation discipline include the following:

1. The accredited in business valuation ("ABV") credential is granted by the American Institute of Certified Public Accountants ("AICPA")
2. The accredited senior appraiser business valuation credential is granted by the American Society of Appraisers ("ASA")
3. The certified business appraiser ("CBA") credential was previously granted by the Institute of Business Appraisers ("IBA") (see explanation below)

4. The certified valuation analyst ("CVA") credential is granted by the National Association of Certified Valuators and Analysts ("NACVA")

In 2008, the IBA merged into NACVA. While NACVA no longer grants the CBA credential to new candidates, it does support and maintain the CBA program for the current CBA credential holders.

Each of these VPOs has developed its own set of requirements in order for a candidate to earn its professional credential. Generally, each of the VPO credentialing requirements include college education, a minimum amount of practical experience, attendance at technical courses and specialized training programs, reviews of demonstration reports, recommendations of current credentialed members, and the passing of a comprehensive technical examination.

Each of the VPOs also has ongoing ethical standards compliance requirements and continuing professional education requirements.

In addition to these VPO credentials, many valuation specialists are either certified public accountants ("CPAs") or chartered financial analysts ("CFAs").

The CPA credential involves a uniform national examination and state-specific accountancy licensing requirements. Many CPAs are (but are not required to be) members of the AICPA. The CFA credential is granted by the Chartered Financial Analyst Institute ("CFAI").

Each of the VPOs (i.e., AICPA, ASA, IBA, and NACVA) has promulgated its own set of professional standards. (In 2008, the IBA professional standards were conformed to—and then merged into—the NACVA professional standards.) The most voluminous of these various sets of business valuation professional standards is the AICPA Statement on Standards for Valuation Services ("SSVS"). The title of SSVS is Valuation of Businesses, Business Ownership Interests, Securities, and Intangible Assets.

Unrelated to any of the above-mentioned VPOs, the Appraisal Standards Board of the Appraisal Foundation promulgates the Uniform Standards *of Professional Appraisal Practice* ("USPAP"). The USPAP standards 9 and 10 relate to the development and the reporting (respectively) of a business valuation or an intangible asset valuation.

## Prior Relationship of the Valuation Specialist and the Subject Company

Tax counsel may also inquire about independence issues when retaining the valuation firm or the individual valuation specialist. There may be a concern if the valuation firm works regularly for the subject private company—or for the subject taxpayer. That association may present the appearance of a bias.

That is, valuations performed for taxation compliance or litigation purposes require the valuation specialist to be independent of the private company—or of the subject taxpayer. The appearance of independence could be questioned if the valuation specialist is frequently retained by the private company or its owner/operators.

## Reviewing the Valuation Report

The first step in tax counsel's review of—and dependence on—the valuation specialist's valuation report is to become familiar with the business, security, or intangible asset valuation process. Counsel should understand the level of due diligence and analysis that will be conducted by the valuation specialist in order to reach the valuation conclusion.

For example, counsel may be interested in whether the valuation specialist plans to interview the private company management—or with other parties—during the course of the valuation. These interviews may be conducted to:

1. understand the nature and history of the private company business and
2. discuss the historical and prospective performance (financial and operational) of the private company business.

If all parties agree, tax counsel may arrange for these interviews to take place in person at the company facilities. This arrangement may provide the valuation specialist with the opportunity to tour the company facilities and to view the physical condition of the company tangible assets.

If the parties agree, the interview process may also allow the valuation specialist to gain a better understanding of the private company (1) services, (2) strategic plan, (3) competitors, and (4) competitive position in the market.

The private company, security, or intangible asset valuation analysis may be documented with a narrative valuation report. As stated above, each of the VPOs has issued professional standards with regard to the reporting of business, security, and intangible asset valuations. The following sections provide a summary of the typical contents of such valuation reports.

## Description of the Subject Ownership Interest

The valuation report should adequately describe the business ownership interest subject to valuation. Typically, this description includes the following:

1. The number of shares (or other ownership units) subject to valuation
2. The name of the company
3. The form of entity ownership

For example, a description of the valuation subject may read as follows:

> We estimated the fair market value of 20,000 shares of the nonvoting common stock of the Alpha Company ("Alpha"). Alpha is a corporation organized in the State of Delaware that has elected S corporation federal income tax status.

The above description informs the report reader as to (1) the number of securities (or other ownership interests) subject to valuation and (2) the name of the private company or business interest that is the subject of the analysis.

## Standard of Value and Premise of Value

The valuation report should describe the standard of value (or definition of value) that is concluded in the analysis. Most valuation purposes have specific standards of value and premises of value that are appropriate for that particular purpose.

Tax counsel should inform the valuation specialist—as an instruction to the valuation specialist's assignment—of the appropriate standard of value in the subject matter. These purpose-specific standards (or definitions) of value are usually based on regulation, statute, or judicial precedent. Often (but not always), these purpose-specific standards (or definitions) of value are generally consistent with the fair market value standard of value.

There are several definitions of fair market value, but most of these definitions contain similar language. Fair market value is generally defined to be the price at which the property would change hands between a willing buyer and a willing seller, when neither is under any compulsion to buy or to sell, and with both parties having reasonable knowledge of the relevant facts.

Some valuation specialists expand this definition to add that the buyers and sellers are hypothetical buyers and sellers—as opposed to a specific buyer and/or seller. Nevertheless, the important elements of the definition remain the same. That is, an unrelated buyer and seller are coming together to conduct a transaction when neither is being forced to buy or sell and both parties are aware of all relevant information pertaining to the business ownership interest.

When the valuation is developed for tax planning, compliance, or controversy purposes, the valuation specialist will apply the fair market value definition promulgated in the corresponding regulations.

The valuation report should also describe the premise of value—that is, the report should explain whether the business ownership interest was valued:

1. as a going-concern business enterprise or
2. as an assumed orderly disposition of individual assets.

If the valuation specialist did not value the private company as a going concern, the valuation report should discuss the rationale for conducting the valuation in that manner.

## Purpose of the Analysis

The valuation report should describe the purpose of the analysis. Typically, the purpose of the report is to provide information to the finder of fact in the subject tax controversy. The valuation report should describe the purpose of the analysis so there is no confusion over the intended use of the report.

"Under the fair market value standard of value, the valuation report typically does not consider any information that became available, or known, subsequent to the valuation date."

## Valuation Date and Report Date

The valuation report should indicate (1) the valuation date and (2) the report date. The valuation date is the date "as of" which the valuation specialist's opinion of value applies. The report date is the date the valuation report was prepared.

For example, the valuation report may estimate the fair market value of the company ownership interest as of December 31, 2018. However, the valuation report may not be prepared until April 15, 2019. In this case, the valuation date is December 31, 2018, and the report date is April 15, 2019.

In this example, tax counsel should understand that the valuation opinion takes into account all known and knowable information available through December 31, 2018. Under the fair market value standard of value, the valuation report typically does not consider any information that became available, or known, subsequent to the valuation date.

## Level of Value and Prerogatives of Ownership Control

During the analysis, the valuation specialist will develop an understanding of the ownership control attributes (or the lack thereof) associated with the business ownership interest. For example, the business ownership interest may consist of one of the following:

1. A 35 percent noncontrolling ownership interest in the company total equity
2. A 51 percent ownership interest that has some ownership control level attributes
3. An 80 percent ownership interest that has many of the features of absolute ownership control

The valuation report should identify the business ownership interest and describe the prerogatives of ownership control that accompany the ownership interest.

For example, a 35 percent ownership interest may allow the holder to elect one company board member but may not provide any other opportunities to effectuate change at the company. In this case, the ownership interest would normally be valued as a noncontrolling ownership interest.

In contrast, a 51 percent ownership interest may allow the holder to exercise ownership control over several aspects of the company. These prerogatives of control may include, but are not limited to the following:

1. The appointing of new board members and management personnel
2. The changing or renegotiation of management compensation and perquisites
3. The issuing or repurchasing of the company shares
4. The issuing or repaying of the company debt
5. The changing of the strategic direction of the company

In this case, the valuation report should:

1. identify the specific control attributes of the business ownership interest and
2. explain how these attributes were considered in the valuation process.

A holder of an 80 percent ownership interest may not only have the prerogatives of control listed in the previous paragraph. That ownership interest holder may also have the ability to sell the private company or substantially all of the company assets. Once again, this level of ownership control should be identified in the valuation report and properly reflected in the valuation analysis.

In addressing the level of ownership control in the valuation report, the specialist may also discuss the distribution of the stock or the unit ownership. This issue may be particularly relevant in situations where no one shareholder has a controlling ownership interest in the company stock or partnership units.

## Sources of Information

The report typically includes a section that lists the data and documents that the valuation specialist relied on to develop the valuation opinion.

By reviewing this section of the valuation report, counsel should develop an understanding of (1) the publicly available documents and (2) the non-publicly-available documents that the specialist considered in the valuation process.

The sources of information list should include not only the financial-related documents used in the valuation analysis (e.g., financial statements, empirical market data), but the non-financial-related documents as well (e.g., client or supplier contracts, leases, licenses, corporation documents). The sources of information list should enable the report reader to identify the documents necessary to replicate the valuation analysis.

## Description of the Company

The report should provide an adequate description for the reader to understand the fundamental position of the company. A description of the private company or business interest typically includes the following:

- A discussion of the history of the company and its current position
- A description of the goods or services provided by the company
- A description of the markets served by the company
- A description of the competitive environment in which the company operates and how the company is positioned within that competitive environment (i.e., the company's market position)
- A discussion of the principal facilities or other assets owned or operated by the company
- A discussion of significant relationships with related parties, clients, suppliers, and so on
- A discussion of any pending litigation or regulatory issues that are significant to the company
- A review of recent transactions in the private company stock/partnership units (if any)
- A discussion of any recent offers received for the company or for its assets

## Overview of General Economic Conditions and Industry Conditions

The report should provide an overview of the general economic conditions and industry-specific factors that affect the valuation of the business interest.

The economic overview may include a discussion of trends in economic growth, inflation, consumer spending, consumer confidence, interest rates, construction starts, and business spending. In each case, the analysis should be tailored to the economic factors that most directly affect the company. This report section may also include a discussion of economic indicators that give insight into the future performance of the private company.

The industry overview section typically describes (1) how the industry operates and (2) recent trends affecting companies within the industry segment. The section may also describe (1) the company's position in the industry segment and (2) its market share relative to other competing companies.

## Company Financial Performance

As part of the valuation process, the valuation specialist assesses the financial performance and financial condition of the private company. A summary of this financial analysis should appear in the valuation report.

The company historical financial performance is reflected on the company income statements and cash flow statements. The report may include a discussion of the following:

- The historical growth or decline in revenue
- The historical growth or decline in aggregate profitability (i.e., gross profit, operating profit, pretax profit, and net profit)
- The historical growth or decline in profit margins
- The historical growth or decline in cash flow
- The historical payments of dividends

The valuation specialist also reviews the balance sheet to assess the company's financial condition. The report may contain a discussion of the following balance-sheet-related items:

- The liquidity and working capital position
- The asset utilization by means of various financial ratios (e.g., accounts receivable turnover, inventory turnover, etc.)
- The tangible property base
- The capital structure and leverage

The financial analyst will include a discussion of significant financial statement trends and also a discussion of what factors caused the respective trends.

The valuation report may also include a discussion of how the company performs relative to other companies in the industry segment. This comparative financial analysis typically identifies the financial strengths and weaknesses of the company compared to other guideline/competing companies.

The comparative financial analysis should help the reader to understand how the company performs relative to other companies in the industry segment. This comparative performance analysis may be based on such factors as size, growth, profitability, and volatility.

## Financial Statement Normalization Adjustments

When appropriate, the valuation specialist may make normalization adjustments to:

1. the private company financial statements and
2. selected guideline publicly traded company financial statements.

Financial statement normalization adjustments may be necessary in order to present the company's financial performance on the same basis as the selected guideline companies' financial performance.

The following list includes some of the financial statements adjustments that the specialist may consider:

- Adjustments for extraordinary or nonrecurring income and expense items
- Adjustments for differences in inventory (and other) accounting methods (e.g., LIFO method, FIFO method)
- Adjustments for nonoperating income and expense items
- Adjustments for non-arm's-length transactions/arrangements
- Adjustments for excess compensation or other benefit expense

The valuation report should identify any financial statement adjustments and explain the rationale for each adjustment.

## Generally Accepted Business Valuation Approaches and Methods

There are three generally accepted business valuation approaches: the market approach, the income approach, and the asset-based approach. (An explanation of the generally accepted intangible asset valuation approaches is beyond the scope of this discussion.)

The valuation report should describe which valuation approaches—and which valuation methods within each approach—the specialist applied in the analysis. In the same respect, the report should explain which valuation approaches (or methods) were not applied in the analysis—and why the specialist did not apply them.

With regard to the market approach, and specifically the guideline publicly traded company method and the guideline merged and acquired company (also sometimes called the guideline transactions) method, the valuation report should include the following:

- **The criteria the specialist applied to select the guideline companies.** The selection criteria may include Standard Industrial Classification code, business description, size, growth, profitability or a combination of several relevant factors.
- **A description of each selected guideline company.** This description may include a discussion of each selected guideline company's business, its products and/or services, and its position in the market. Other information, such as whether the guideline company recently completed acquisitions, may also be relevant.
- **The market-derived pricing multiples the valuation specialist selected for the analysis.** These pricing multiples may include invested capital pricing multiples or equity pricing multiples. Industry-specific factors often influence the type of market pricing multiples that the specialist applies in the valuation analysis.

  For example, the valuation of an engineering and architectural firm may involve the application of market-derived pricing multiples that are based on (1) the market value of equity of the firm and (2) the earnings and/or the book value of the firm's total equity capital.

  In contrast, the valuation of a manufacturing company may involve the application of market-derived pricing multiples that are based on (1) the market value of invested capital of the company and (2) the invested capital earnings and/or the invested capital cash flow of the company.
- **The rationale for selecting the market-derived invested capital pricing multiples that are applied to the company financial fundamentals.** The report reader should be able to understand the valuation specialist's thought process for arriving at the selected valuation pricing multiples. The application of an average or median market-derived pricing multiple, with no support for such a selection, is typically not appropriate.
- **The rationale for the selected weighting used in the valuation synthesis.** For example, if the value indication based on projected cash flow is assigned more (or less) weight than the value indication based on trailing 12-month cash flow, then the report should explain why.

With regard to the income approach, and specifically the discounted cash flow method, the valuation report should include the following:

- **A discussion of who prepared the financial projections**. The financial projections are often prepared by the company management. In other cases, the financial projections may be prepared by the specialist with input from the company management.

  In the case of management-prepared financial projections, the report may explain how the specialist tested the reasonableness of the financial projections. In all cases, the financial projections should be supportable.

- **The appropriate matching of financial projections and the present value discount rate**. For example, if the discounted cash flow method incorporates a projection of invested capital cash flow, or the amount of cash flow available to invested capital, then the present value discount rate should be the weighted average cost of capital.

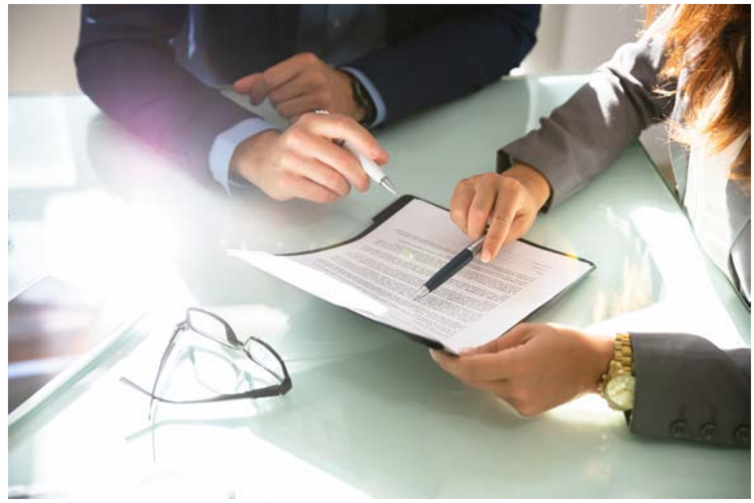
  In contrast, if the analysis incorporates a projection of cash flow available to equity capital, then the present value discount rate should be the cost of equity capital.

- **A discussion of the cost of capital components**. This discussion may include an explanation of how the specialist estimated the cost of equity capital, the cost of debt capital, and the weighting of each capital component in a weighted average cost of capital calculation.

- **Support for the selected residual value pricing multiple or residual value direct capitalization rate**. In many business, security, or intangible asset valuations, the residual value (also called the terminal value) may represent a significant portion of the total value.

  As a result, the selected residual value pricing multiple, or residual value direct capitalization rate, often has a substantial effect on the value conclusion. The specialist's rationale for the selected residual value pricing multiple, or the selected long-term growth rate within the residual value direct capitalization rate, should be adequately explained and supported.

The generally accepted asset-based approach valuation methods include the asset accumulation method and the adjusted net asset value method. While the income approach and the market approach valuation methods focus on the company's income statement, the asset-based approach methods focus on the company's balance sheet.



The application of the asset-based approach involves a valuation of both (1) all of the company's assets—both tangible and intangible—and (2) all of the company's liabilities—both recorded and contingent.

The asset accumulation method involves the discrete revaluation of all of the company's assets and liabilities. The adjusted net asset value method involves the collective—or aggregate—revaluation of all of the company's accounts. This revaluation procedure often involves the application of the capitalized excess earnings method ("CEEM").

Typically, in the application of the asset-based approach, at least one intangible asset category is revalued by the application of either (1) the multiperiod excess earnings method ("MEEM") or (2) the CEEM.

Tax counsel should be aware that the asset-based approach may be used to estimate the going-concern value of an operating company. That is, the asset-based approach (unless specifically applied to conclude such a value) does not conclude the liquidation value of the going-concern company. Finally, before the application of valuation adjustments, the asset-based approach typically concludes a marketable, controlling ownership interest level of value.

## Valuation Synthesis and Conclusion

The valuation report should contain a section that provides (1) a valuation synthesis of the alternative value indications and (2) a final value conclusion for the company or ownership interest.

The following factors should be included in this report section:

- **A discussion of how each value indication from each valuation approach and method was weighted in the final value conclusion.** An explanation should be provided for each of the selected weightings.

- **A discussion of any valuation adjustments—that is, valuation premiums or discounts—that may be appropriate to reflect the ownership control, or lack of ownership control, attributes of the company or business ownership interest.** The discussion of the application of valuation adjustments should include:
    1. the rationale for each valuation premium or valuation discount and
    2. the supporting data or factors considered by the valuation specialist to select the valuation premium or valuation discount.

    The ownership control premium should reflect the adjustments that were made to the company financial statements. In other words, if the specialist adjusted the company financial performance for ownership control level/discretionary items, then the specialist should not reflect these same control price benefits a second time through the application of an ownership control premium.
- **A discussion of nonoperating assets (or liabilities) that need to be factored into the analysis.** These may include excess cash or securities, related party loans, excess land, investments in other companies, or other assets that have not been properly reflected in the valuation analysis.
- **A discussion of the illiquidity, or lack of marketability, of the business interest.** Most noncontrolling ownership interests are relatively illiquid.
- **A discussion of any contingent and limiting conditions.** The report should contain language that lists any contingent and limiting conditions regarding the analysis and opinion.

After reviewing the valuation report, tax counsel—or any other report reader—should be able to understand the following issues:

- Was the report readable and easy to understand? Or, was it filled with undefined valuation terms and jargon?
- Was the report comprehensive and organized in a logical manner?
- If more than one valuation date was considered, has the concluded value changed over time, and if so, what were the primary drivers of this change in value (i.e., the company performance, the subject industry or market performance, or a combination of the two)?
- Has the company's financial performance improved or deteriorated over time, and has the concluded value changed accordingly?
- Which generally accepted valuation approaches and methods were applied in the analysis? And, why were they applied?
- Does the value conclusion seem reasonable given (1) the historical and projected financial performance of the company, (2) the relevant market-based data, and (3) the relevant general economic conditions and industry-specific conditions?
- Does the value conclusion properly reflect the relevant standard of value, premise of value, and other purpose-specific factors and/or legal instructions?

## Summary and Conclusion

Tax counsel may need to retain a valuation specialist to develop the value of a private company, a business ownership interest, a security, or a contract right or other intangible asset. These valuations are sometimes needed with regard to tax planning, tax compliance, and tax controversy matters. And, these matters may relate to gift tax, estate tax, generation-skipping transfer tax, or other wealth transfer tax matters.

This discussion assumed that the tax counsel retains the valuation specialist to assist counsel in the representation of a taxpayer client in a tax controversy matter.

This discussion summarized some of the issues that tax counsel may consider in the selection of a valuation specialist. This specialist may assist the tax counsel as a consulting expert or as a testifying expert. In addition, this discussion summarized the development procedures and the reporting process related to the private company, closely held security, or intangible asset valuation.

Tax counsel should be generally aware of the professional standards and practices related to the development and reporting of the valuation. This is because, in addition to retaining the valuation specialist, tax counsel may have to work with, review the work of, rely on, and defend the selected specialist.

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