

CALCULATION ENGAGEMENT V. VALUATION ENGAGEMENT IN MARITAL DISSOLUTION: INSIGHT FROM A VALUATION ANALYST

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Determining which level of service is most appropriate to help estimate the value of a closely held business ownership interest in a marital dissolution context can be problematic. It is important that you, as a lawyer, in conjunction with the valuation analyst (i.e., expert witness), discuss the circumstances surrounding each potential engagement, including the ultimate goal, result and audience.

When a lawyer retains a valuation analyst to provide services in a marital dissolution context, typically the valuation analyst is retained through what is termed an “engagement to estimate value.” Once it is determined that the valuation analyst will be formally retained by the lawyer through an engagement to estimate value, the type of engagement must then be determined, as required by the American Institute of Certified Public Accountants Statement on Standards for Valuation Services No. 1, *Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset* (SSVS).

The two types of engagements to estimate value, as proffered by SSVS, are (1) a calculation engagement and (2) a valuation engagement.

As a valuation analyst collaborating with a lawyer within a marital dissolution context, the following scenarios help me (and ultimately the lawyer) in determining what type of engagement is most appropriate for each matter:

In the first scenario, assume that the purpose of the valuation is to assist with preliminary management planning associated with the potential sale of a closely held business ownership interest. In this circumstance, a calculation engagement is likely appropriate and acceptable as the goal is to estimate the value of the closely held business

ownership interest in order to obtain an idea of what a hypothetical willing buyer might pay for said interest. Therefore, the result of the calculation engagement may be used as an initial negotiating tool in the up-front discussions with the hypothetical willing buyer. While updating the calculation engagement to a valuation engagement (once an agreement to sell has been finalized) may be appropriate, a calculation engagement can be a suitable



and cost effective option to a valuation engagement when the purpose is for general management planning purposes.

In the second example, the individual with the same closely held business ownership interest is involved in a marital dissolution. Further, it is assumed that the marital dissolution will require a division of the relevant marital assets. One of the more significant assets in the marital community is the closely held business ownership interest and, therefore, a value needs to be estimated in order to equitably divide the closely held business ownership interest amongst the parties. If the marital dissolution is in its infancy stages, then a calculation engagement may be appropriate in order to assist with

mediation or settlement. However, it is important for the lawyer to consider that in proceedings that may end up in a court of law (such as in a marital dissolution), the selected engagement should ultimately adhere to the standards of a valuation engagement, thereby allowing the valuation analyst to opine on an estimated conclusion of value as it relates to the closely held business ownership interest.

In fact, SSVS explicitly states that in a calculation engagement, the valuation analyst should disclose (1) that the calculation engagement does not include all the procedures required of a valuation engagement and (2) that if a valuation engagement had been performed, the resulting indications of value may have been different. Due to this difference, among others, many valuation analysts will not testify in a court of law without having completed a valuation engagement that results in a conclusion of value. This conclusion of value represents the valuation analyst’s professional opinion or conclusion, which can typically be more impactful in a marital dissolution context as compared to a calculation of value.

Lawyers should be aware, however, that this is not to say that each marital dissolution engagement should be a valuation engagement. A calculation engagement may be appropriate for certain mediation or non-mediation settlement purposes. Rather, this is a decision that you, as the lawyer, should reach in partnership with your valuation analyst; taking into consideration the ultimate goal, result and audience for each engagement. †



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