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Cash Deals Abound

An unscientific survey of 2018 M&A deals of public companies indicates that all-cash deals, plus stock-and-cash deals, far outnumber all-stock deals. You might think that stock deals would predominate because acquiring companies' stock is so valuable at current stock market prices, but they do not.

Of course the Microsofts of the world will continue to acquire many small startups for stock; and the terms of those deals usually are not public, so they are hard to follow. But when the target is public or the terms otherwise are announced, the cash and cash/stock deals seem to be most common.

A major factor in the decline of wholly nontaxable mergers is that now probably less than one-quarter of publicly traded stocks are held by taxable persons. (See Steve Rosenthal and Lydia Austin, "The Dwindling Taxable Share of U.S. Corporate Stock," *Tax Notes*, May 16, 2016, p. 923.)

Often the cash share is more than half the considerations. In those deals, qualification as a reorganization requires use of the forward merger, which is usually thought to require at least 40% equity consideration. Many of those deals are structured as a first-step merger of a Mergersub of Acquirer into the Target, followed by merger of the Target into the Acquirer or another Mergersub. Rev. Rul. 2001-46, 2001-2 CB 321.

Many acquirers partly self-fund the purchases, but most borrow some or all of the cash needed. The borrowers will have to contend with revised Section 163(j). That section was supposed to be a major revenue raiser in the Tax Cuts and Jobs Act of 2017. However, cash acquisitions do not seem to have slowed. Of course, multinationals have other cash sources, including repatriations from foreign subsidiaries that now can pay tax-free dividends inbound.

At some point, the cash spending spree will come to an end. At that time, corporate debt levels likely will be high, and another cycle of corporate distress will appear. The cash deals then may not look so good in hindsight.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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