Types of Acquisitions – Quick Reference
Stock Purchase vs. Asset Purchase vs. 338(h)(10) Election

http://breakingintowallstreet.com

In a **stock purchase** the buyer acquires the seller's stock from shareholders, all assets and liabilities, and off-balance sheet items as well. In an **asset purchase** the buyer can pick and choose which assets it wants to acquire and which liabilities it wants to assume. Unless it's stated explicitly in the purchase agreement, the buyer doesn't get it.

In addition to both of those, there's also a **Section 338(h)(10) Election**, which allows a stock purchase to be treated like an asset purchase for accounting purposes.

	Stock Purchase	**Asset Purchase**	**338(h)(10) Election**
Sellers:	Shareholders	Corporate Entity	Shareholders
Assets & Liabilities:	Buyer gets everything	Buyer picks and chooses	Buyer gets everything
Valuation of Assets & Liabilities:	Book values used, but modified for any step-ups or step-downs	Every single asset/liability must be valued separately	Book values used, but modified for any step-ups or step-downs
Seller Taxes:	Single Taxation – Shareholders pay capital gains tax	Double Taxation – taxes on Purchase Price Minus Fair Market Value as well as on shareholder proceeds	Double Taxation – taxes on Purchase Price Minus Fair Market Value as well as on shareholder proceeds
Book Basis:	Assets/liabilities stepped up or down for accounting purposes	Assets/liabilities stepped up or down for accounting purposes	Assets/liabilities stepped up or down for accounting purposes
Tax Basis:	Buyer assumes seller's tax basis for assets/liabilities	Buyer receives tax step-up for assets/liabilities	Buyer receives tax step-up for assets/liabilities
Goodwill & Other Intangibles:	**Not** amortized for tax purposes and **not** tax-deductible	Amortization is **tax-deductible**; amortized over 15 years for tax purposes	Amortization is **tax-deductible**; amortized over 15 years for tax purposes
Seller NOLs:	Buyer can apply Section 382 post-transaction to reduce taxes	Completely lost in transaction	Completely lost in transaction
Complexity:	Inexpensive and quick to execute	Complex and time-consuming – need to value and transfer each asset	Inexpensive and quick to execute
Used For:	Most public/large companies	Divestitures; distressed sales; some private companies	Private companies; compromise between buyer and seller
Preferred By:	Sellers	Buyers	Both

Ok, so how does all of this actually affect our merger model?

	Stock Purchase	Asset Purchase	338(h)(10) Election
Combined Balance Sheet:	Add **all** seller's assets and liabilities (assume shareholders' equity is wiped out); adjust for write-ups and write-downs and new items	Only add the seller's assets and liabilities that the buyer is acquiring; adjust for write-ups and write-downs and new items created in acquisition	Add **all** seller's assets and liabilities (assume shareholders' equity is wiped out); adjust for write-ups and write-downs and new items
Goodwill Created:	=Equity Purchase Price – Seller Book Value + Seller Existing Goodwill – PP&E Write-Up – Intangibles Write-Up – Seller Existing DTL + Write-Down of Seller's Existing DTA + New DTL Created	=Equity Purchase Price – Seller Book Value + Seller Existing Goodwill – PP&E Write-Up – Intangibles Write-Up – Seller Existing DTL + Write-Down of Seller's Existing DTA	=Equity Purchase Price – Seller Book Value + Seller Existing Goodwill – PP&E Write-Up – Intangibles Write-Up – Seller Existing DTL + Write-Down of Seller's Existing DTA
Goodwill Treatment:	Not amortized for accounting purposes; not amortized for tax purposes and not tax-deductible	Not amortized for accounting purposes; amortized over **15 years** for taxes and **tax-deductible**	Not amortized for accounting purposes; amortized over **15 years** for taxes and **tax-deductible**
Intangibles Treatment:	Amortized for accounting purposes; **not** tax-deductible	Amortized for accounting purposes; tax-amortized over **15 years** and **tax-deductible**	Amortized for accounting purposes; tax-amortized over **15 years** and **tax-deductible**
Depreciation from PP&E Write-Up:	Affects Pre-Tax Income but **not** tax-deductible	Affects Pre-Tax Income and **tax-deductible**	Affects Pre-Tax Income and **tax-deductible**
New DTL Created:	Total Asset Write-Up * Buyer Tax Rate	$0	$0
Annual NOL Usage Allowed:	Seller's Equity Purchase Price * MAX(Previous 3 Month's Adjusted Long-Term Rates)	$0	$0
DTA Write-Down:	=MAX(0, NOL Balance – Allowed Annual Usage * Years Until Expiration)	Subtract entire NOL balance from DTA	Subtract entire NOL balance from DTA

What's the net impact of all these tax items on our merger model?

Surprisingly, they don't do that much. You calculate the **book income tax expense** – what the company should owe in taxes based on its pre-tax income and tax rate – and then calculate the **cash income tax expense** – what they actually pay based on their NOL usage, and how intangibles, goodwill, and depreciation are deducted or not deducted for tax purposes.

If the combined company **owes more in cash taxes than it does in book taxes**, we record that by **decreasing** the **deferred income tax liability (DTL)** on its balance sheet; if it **owes less in cash taxes than it does in book taxes**, we **increase** its **deferred income tax liability (DTL)**.

Some of these tax details may seem confusing, and that's because they are. It takes some time to get used to all the rules.

However, keep in mind that **in most cases all these tax details don't impact the merger model output very much** unless we have a really unusual situation.