Lectures 2 and 3 (Notes by Leora Schiff)
15.649 - The Law of Mergers and Acquisitions (Spring 2003) - Prof. John Akula

Tax Considerations

I. Conflicting Objectives

A. Buyer
   a. Step up in basis
   b. Allocation of purchase price to items with fastest tax depreciation/amortization
   c. May prefer cash sale to prevent dilution/other
B. Seller
   a. Single vs. double tax
   b. Deferred taxes
   c. Want taxable sales
      i. Use of NOLs
      ii. Sale of bad division – loss for tax purposes

II. Taxable transactions

A. Cash for Assets
B. Cash for stock
C. IRC Section 338 Election
   a. Treated as sale of assets for income tax purposes – easier than asset sale
   b. Step up in basis for acquirer
   c. Immediate tax liability for Target
   d. Elected by purchasing corp.
   e. Limitations - Qualified stock purchase of at least 80% shares acquired within 12 months of acquisition

D. IRC Section 338 (h)(10) Election
   a. Joint election by seller and purchaser
   b. Target must be part of an affiliated group of corporations (at least 80% sub of another corp) or an S corp
   c. Results
      i. Seller's gains/losses from the deemed asset sale can be combined with those of consolidated group
      ii. No gain/loss recognized on sale of the stock of target

E. Liquidating the Target
F. Cash-Out Mergers

III. Tax-Free Transactions

A. Non-Recognition
   a. Acquirer – use stock to acquire
   b. Target – receive stock
   c. Shareholders of Target – stock-for-stock transaction

B. No change in basis

C. A Reorganization – statutory merger
D. B Reorg – stock for stock
E. C. Reorg – stock for assets
F. D-Reorg – spin-off
G. E Reorg – recapitalization of individual company
H. F Reorg – identity/location change
I. G Reorg – banckruptcy