Grant Thornton

Japan Tax Bulletin

Taxation of business transfers

January 2023

Reorganization has become an indispensable tool for efficient corporate management and business expansion.
As one of the methods, the Companies Act provides for a legal framework of business transfer.
Business transfers are used to transfer a business to another company in order to improve management efficiency, or to take over another company's business in order to further expand the business.
Business transfers may also be used to resolve a company's insolvency.

1. *What is a business transfer?*

A business transfer is the transfer of all or part of a business belonging to the transferor company to another company.
Compared to other methods such as stock transfers, company splits, and mergers, business transfers are characterized by the fact that the transferee can choose the business to be transferred at the time the contract is concluded.
However, the process of business transfer is more complicated than other M&A methods, and individual procedures must be taken to transfer assets, liabilities, employment relationships, etc. included in the transferred business to the other party. In addition to the need to obtain the consent of creditors and employees individually before the transfer, registration procedures are also required if real estate is involved.

In general, the advantages and disadvantages of business transfers include the following matters.

(advantages)

- By transferring unnecessary business, you can keep the business you want to focus on
- No off-balance-sheet debts or other liabilities are inherited
- Possible to gain profit from the transfer
- If there is no suitable successor when an entrepreneur wants retire from the business , the succession problem can be solved.
- Can secure assets and employees that you want to keep
- By acquiring money from the business transfer, you can invest in another business
- Continuation of the corporate status is possible.

(Disadvantages)

- After the transfer, there are restrictions on conducting the same type of business
- Corporate tax is incurred on the gain from the transfer
- Individual contract transfer procedures with employees are required
- Requires a special resolution at a general shareholders meeting
- Need to explain to business partners and obtain their approval

2. *Tax Treatment*

2.1 *Treatment under Japan income tax law*

For tax purposes, business transfers must be made at market value. Therefore, if the "amount transferred, which is equivalent to the market value of the assets and liabilities" exceeds the "difference between the book value of the assets and liabilities to be transferred," corporate income tax will be imposed on the profit.
In addition, the transfer of assets in connection with the transfer of a business falls under a taxable transaction for consumption tax purposes, and thus a consumption tax return is required.
Among the transferred assets, transfers of tangible fixed assets, etc. other than land are subject to consumption tax, while transfers of monetary claims, land, securities, etc. are not subject to consumption tax as non-taxable transactions.
If non-taxable sales increase, the ratio of taxable sales against taxable sales + non-taxable sales will also increase, which will affect the calculation of the credit for input taxes on taxable purchases.

2.2 *Treatment of Business Transferee*

The acquisition value of assets acquired through a business transfer is recorded at market value. However, when acquiring a business in consideration of the company's social credibility, brand recognition, technical capabilities possessed by the company, employee skills, business partner relationships, etc., the acquisition price may exceed the net asset value of the transferred business at market value, and in such a case goodwill is recognized.

Grant Thornton

Goodwill is amortized on a straight-line basis over a period of 20 years or less for accounting purposes, but is amortized on a straight-line basis over a period of 5 years for tax purposes.
Goodwill is also subject to consumption tax, so it is necessary to keep this in mind when filing consumption tax returns.
In addition, if the acquired assets include real estate, real estate acquisition tax and registration and license tax will be imposed.

3. Tax Differences from a Corporate Split

The Japanese Companies Act also provides for a corporate split, which is similar to a business transfer.
In a company split, the business to be split is comprehensively taken over as a whole, so there is no need to make individual contracts regarding the details of the split.
On the other hand, in the case of a business transfer, the transferred business assets are succeeded individually, and therefore, the contractual relationship must also be made individually.
In addition, while a company split is not subject to consumption tax because it is a comprehensive succession, a business transfer is a transaction of individual assets, and thus is a taxable transaction subject to consumption tax.

© Grant Thornton Taiyo Tax Corporation. All rights reserved. "Grant Thornton" refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton Taiyo Human Capital Corporation is member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.