Structuring Acquisitions and Sales when the Target is an S Corp

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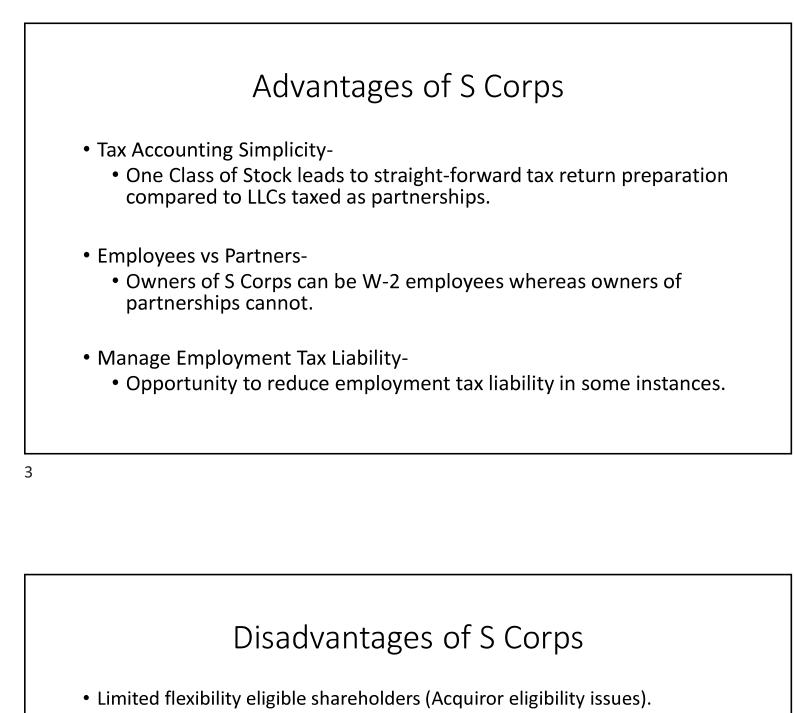
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S Corp Eligibility Requirements

- An S Corp cannot have more than 100 shareholders.
- Shareholders must be individuals with certain exceptions (certain trusts, estates, and tax-exempt entities); no C corps or partnerships.
- Shareholders cannot be foreign.
- An S Corp must have a single class of stock.
- An S Corp cannot be an ineligible corporation (certain financial institutions, insurance companies or DISCs).

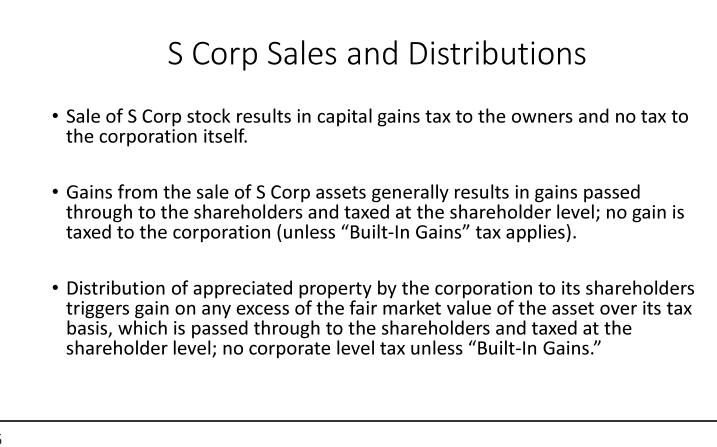
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- S Corps can only have a single class of stock (capital structure limits).
 Income allocations and cash distributions pro rata only.
 - Cannot split capital and profits interests like partnerships.
- Former C Corps turned S Corps have build-in gains tax issues and passive income tax issues.
- Buyers generally prefer to buy LLCs over S Corps to get tax basis step-up in acquired assets.

Taxation of S Corporations

- S Corps pass through items of income and loss to their shareholders and generally are not subject to tax.
 - No corporate level tax except when earnings & profits from C Corp history (Built-in Gains Tax).
 - S Corp stock basis adjustment and "AAA account" ensures no double tax.
 - Distributions in excess of shareholder's basis in S Corp stock taxable as capital gains (corporate debt does not increase basis in stock like in partnerships).
- S Corps can have a corporate subsidiary but not a corporate shareholder.
 - Wholly-owned corporate subsidiary can elect to be Qualified Subchapter S Subsidiary (QSub) that is treated as a disregarded entity for tax purposes.



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