

An Employee Stock Ownership Program (ESOP) can now be an Alternative to a Merger or Acquisition for Architecture and Engineering Firms in New York

February 21, 2023



On July 21, 2022, New York Governor Hochul signed into law an amendment to the Design Professional Corporation (DPC) law that allows an employee stock ownership plan (ESOP) to own 100% of a DPC starting in July 2024.

This is a big victory for New York architecture & engineering (A&E) firms as it will allow another ownership option that can both reward and incentivize employees, provide greater flexibility for ownership transitions and provide an alternative to mergers and acquisitions.

ESOPs can provide various advantages not available in traditional M&A transactions. With company owners postponing sales in the face of potentially lower values, inferior offers, and market uncertainty, ESOPs allow for partial sales, have the potential to maximize after-tax sales proceeds and provide sources of financing which are both tax-advantaged and flexible. Seller financing may also be measurably

more attractive in an ESOP-purchase scenario than under traditional M&A models.

ESOPs offer strategic and structural features that can be an option to help accomplish various objectives of companies and their owners, including:

- Tax-advantaged financing
- Exit and succession strategy for owners and investors
- Partial and/or tax-deferred sales
- Leveraged business acquisition or recapitalization
- Expansion of employee ownership
- Creation of an “internal” market for shares
- Tax-deferred employee retirement funding and savings
- Deferred employee compensation
- Potential to elect S Corporation and ESOP to be a tax-exempt S-corporation shareholder
- Employee retention and attraction

ESOPs have many advantages in the right situation. However, the ability for an ESOP to meet the objectives of your shareholders, management, and employees must be carefully examined before you make the required commitment to such a program.

Our experienced A&E team helps facilitate the decision-making process. We work together with A&E firms and their transaction teams such as attorneys and advisors in an integrated, seamless, and efficient manner to accomplish their goals. For more information, please contact [Phillip Ross](#), [Anish Shah](#) or your Anchin Relationship Partner.