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Tax M&A Update

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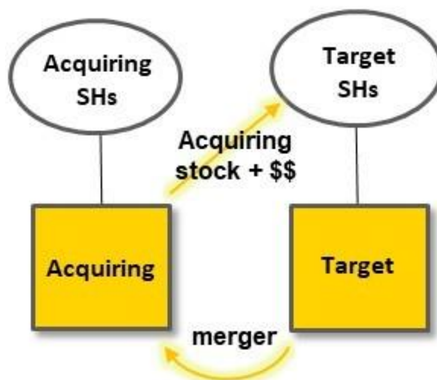
Technical Developments and Musings

CAMT and M&A. The corporate alternative minimum tax is something completely different: a 15% corporate-level tax based on a company's financial statements, but subject to numerous adjustments to produce "adjusted financial statement income." While the tax applies only to "applicable corporations" beginning in 2023, many corporations or corporate groups may still be required to engage in significant "look back" modelling to understand whether they meet the threshold three-year average of $1 billion of adjusted financial statement income. For those companies close to the line, M&A transactions will be important. It is not clear, for example, how the $1 billion threshold will be determined in "mixed" cases, such as where a corporation with $800 million of average annual adjusted financial statement income acquires either a company that had been treated as an applicable corporation or some or all of the assets of such company. Moreover, even where it's settled that a particular corporation or consolidated group is an applicable corporation, given the CAMT's departure from income tax law and principles, M&A is likely to also present significant interpretational and computational challenges, particularly in the absence of regulatory guidance. For example, one of the "adjustments" to financial statement income envisioned by the new law is for a corporation that owns a disregarded entity. In addition, Treasury is granted regulatory authority to "carry out the principles" of certain Subchapter C provisions involving corporate liquidations and corporate reorganizations. For further info, see Tax Alert 2022-1237.



Single-entity principles and the intercompany sale of partnership interests. In a generic "chief counsel advice"—202240017— the IRS reaffirmed its position regarding the interaction of the consolidated return intercompany transaction system and the rules under Subchapter K when one member of a consolidated group sells partnership interests to another. For separate company purposes, under §743(b) the transaction results in a stepped-up basis in partnership assets allocable to the purchasing partner. But the CCA provides that corresponding increased depreciation deductions are "redetermined" to be noncapital, nondeductible expenses under the intercompany transaction system. The IRS rejected the taxpayer's contention that no specific rule provided the result asserted by the government: "the current intercompany transaction regulations were intentionally drafted as broad principle-based rules, rather than mechanical rules, and their more common applications are illustrated through examples. Thus, contrary to Taxpayer's apparent contention, the examples in §1.1502-13(c)(7) do not limit the scope of the regulations."

IRS withdraws 2006 proposed PTEP regulations. Treasury withdrew proposed regulations from 2006 that addressed the exclusion from gross income of previously taxed earnings and profits under §959 and related basis adjustments under §961. The withdrawal notice states that "[w]ithdrawing the proposed regulations at this point will help prevent possible abuse or other misuse of them—such as inappropriate basis adjustments in certain stock acquisitions to which section 304(a)(1) applies—while the Treasury Department and the IRS continue to develop proposed regulations."