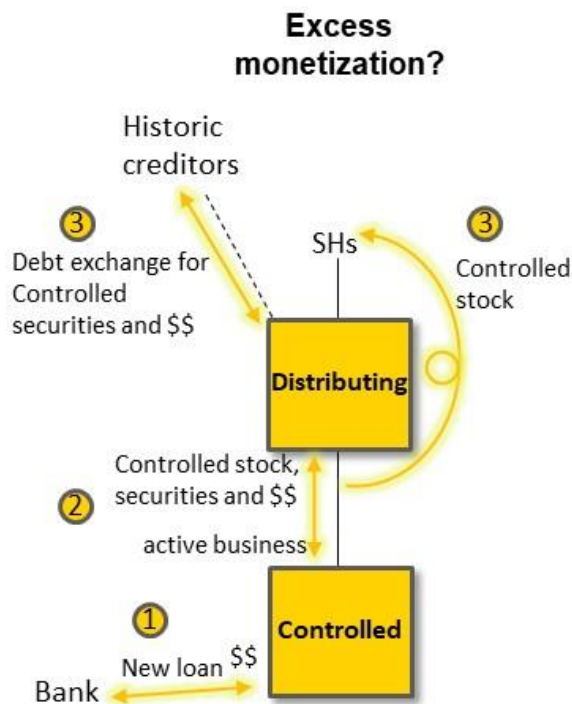


## Technical Developments and Musings

**Treasury proposes statutory changes to leveraged spin-offs.** Treasury released its [FY24 Green Book](#), with revenue-raising proposals that include amending the Code’s treatment of leveraged §355 spin-offs. The proposal is conceptually similar to a version that was included in the Build Back Better Act (BBBA), but which did not become law. (The new proposal would be effective upon enactment.) Treasury asserts that various “monetization techniques” that have the effect of adjusting liabilities between Distributing and Controlled “are all economically similar” and should have the same adjusted basis limitation. Thus, the proposal identifies an “excess monetization amount,” which is equal to the aggregate of the following items, less total adjusted basis of assets transferred by Distributing to Controlled: (i) the total amount of the liabilities assumed by Controlled; (ii) the total amount of Controlled boot transferred to Distributing’s creditors; (iii) the fair market value of nonqualified preferred stock transferred to Distributing’s creditors; and (iv) the total principal amount of Controlled debt transferred to Distributing’s creditors. No legislative language is included with the proposal, but as described it apparently would fix certain technical issues with the BBBA version by providing a two-stage gain recognition mechanism. First, Distributing would recognize gain—apparently under §361(b)—on the lesser of (i) the excess monetization amount or (ii) the amount of Controlled boot transferred to Distributing’s creditors. Second, if the excess monetization amount exceeds the Controlled boot, Distributing could recognize gain—apparently under §361(c)—on the distribution of Controlled securities. In this case, a principal amount of Controlled securities corresponding to such excess amount would be treated as sold, with tax basis of such securities presumably adjusted for the first-stage gain recognition. For further info on certain other proposals, see [Tax Alert 2023-0509](#).



proposals, see [Tax Alert 2023-0509](#).

**Midyear distributions of PTEP.** IRS generic advice memorandum [2023-02](#) addresses the timing and interaction of §961 CFC basis adjustments for a tax year in which a US shareholder has either Subpart F or GILTI income inclusions as well as a mid-year distribution of cash or other property by the CFC. The non-precedential memorandum helpfully concludes that the stock basis increase for the inclusion is taken into account before the basis reduction, thus avoiding unnecessary gain recognition under §961(b)(2).

**IRS disavows *Complex Media*.** The IRS formally disagreed with a 2021 Tax Court memorandum decision, *Complex Media, Inc.* (T.C. Memo.2021-14), which permitted a taxpayer to integrate a corporate redemption with a broader transaction. [AOD 2023-02](#) states that the IRS “will continue to challenge an assertion by a taxpayer that the form of a transaction, as chosen by that taxpayer, memorialized in relevant agreements, and implemented, does not bind the taxpayer for Federal tax purposes, especially if the taxpayer does not fully, properly, and consistently report the transaction.”