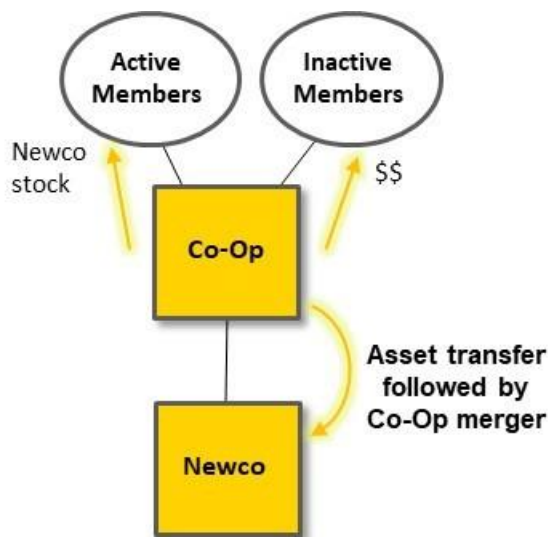


Technical Developments and Musings

Cooperative member interests participate in Section 354 exchange. Taxable nonprofit corporate cooperatives seeking to reorganize do not fit well within the statutory framework and presumptions of the §368 corporate reorganization provisions. Typically, such entities, like the taxpayer in [PLR 202330006](#), have neither shareholders nor stock as such, but just membership interests. The taxpayer cooperative (Co-Op) in the recent ruling wished to reorganize as an LLC (Newco) taxable as a corporation for US federal tax purposes. To accomplish this objective, Co-Op first transferred all of its assets to Newco, while distributing



ing cash to its inactive members in exchange for their capital credit accounts. Co-Op plans to merge into Newco, with active members receiving Newco stock in proportion to the balance of their capital credit accounts. Nonrecognition treatment under §354 notably requires an exchange of *stock* for stock. Are membership interests and associated capital accounts effectively stock for this purpose? In this case, the active members have the right to elect Co-Op's board of directors on a one-member, one-vote basis and the right to Co-Op's assets upon liquidation (following the satisfaction of debt and outstanding capital credit balances). Further, Co-Op represented that, provided that the exchange of active members' interests (consisting of a membership interest and a capital credit account in Taxpayer) for Newco stock

qualifies as an exchange pursuant to §354(a), the series of steps would otherwise qualify as an F reorganization. On this basis, the IRS ruled that the exchange will be governed by §354(a), provided the series of steps otherwise qualifies as an F reorganization.

Split-waiver elections finalized. [Treasury Decision 9977](#) represents finalized split-waiver net operating loss carryback regulations, unchanged from earlier versions. The regulations permit targeted NOL carrybacks elections by consolidated groups, to the extent NOL carrybacks—although currently limited—once again become more generally available. For further info, see [Tax Alert 2023-1220](#).

“Fast track” now permanent. For corporate taxpayers seeking IRS private letter rulings, the IRS made its pilot “fast track” program permanent in [Rev. Proc. 2023-26](#) for those requests that meet the guidelines. The new program has two notable changes: (i) providing that fast-track processing is not available for letter rulings that involve a closing agreement; and (ii) a clarification that, although the reason(s) for requesting fast-track processing must be provided, a business need for fast-track processing is not required, unless taxpayers are requesting a ruling in less than 12 weeks. For further info, see [Tax Alert 2023-1329](#).

Temporary FTC relief. Perhaps the most broadly applicable recent development affecting US multinational corporate groups is the IRS announcement in [Notice 2023-55](#), which permits taxpayers to apply prior foreign tax credit regulations, while also deferring implementation of key components of the 2021 FTC regulations. For further info, see [Tax Alert 2023-1315](#).