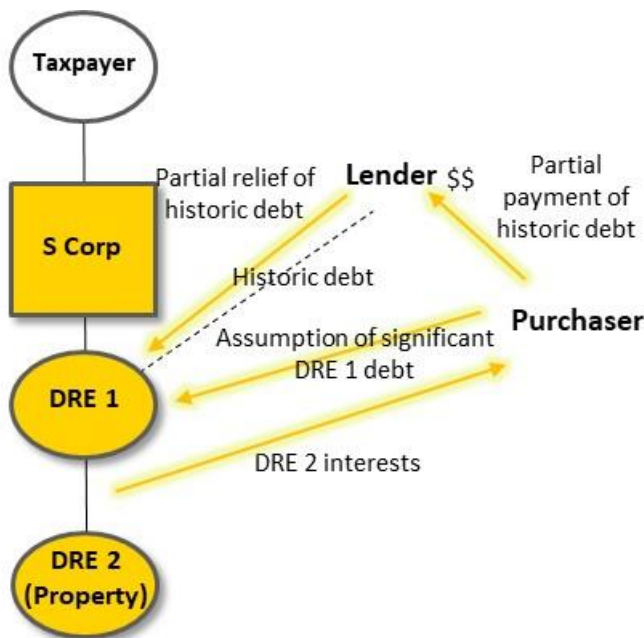


Technical Developments and Musings

Distinctions with a difference: amount realized versus COD income. The Tax Court memorandum decision in *Parker v. Comm’r*, T.C. Memo. 2023-104, illustrates the importance of distinguishing between debt relief that produces taxable income in the form of amount realized versus debt relief that produces cancellation of debt (COD) income, which may be eligible for income exclusion to the extent of taxpayer insolvency, especially where an asset disposition is involved. The taxpayer in *Parker* was the sole shareholder of an S corporation engaged in real estate development, which had acquired property in 2007 via third-party financing. In 2012, the property was sold. As illustrated here, the asset disposition and debt relief involved three main parties, including a purchaser and the historic lender. Where *nonrecourse* debt relief is conditioned upon a sale or exchange of property or is “otherwise a part” of such an event, the amount of debt relief is properly included in amount realized as taxable income, not COD income, the court noted. Here, the S corporation treated a significant amount of debt relief as amount realized, as a purchaser assumed certain outstanding obligations. But the S corporation also claimed insolvency and sought to treat such debt relief as excluded COD under §108(a)(1)(B). However, the Tax Court sided with the IRS, concluding that (i) the loans were nonrecourse as to the S corporation, despite the taxpayer’s personal guarantee, as they were secured by interests in disregarded entities (DREs); and (ii) the cancellation of such loans “was part of the sale” by the S corporation of property held by DREs to purchaser, noting the loan cancellation date was the same date as various other agreements effecting the sale of the property.



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Seventh Circuit agrees: no deferred compensation deduction by seller in asset sale. In *Hoops, LP v. Comm’r*, the Seventh Circuit Court of Appeals, concluded that a more specific statutory provision (§404(a)(5)) trumped a regulatory provision addressing the economic performance requirement. As a consequence, a selling partnership with deferred compensation obligations could not claim a deferred compensation deduction in the year of the asset sale, even though the purchaser’s assumption of the obligation was treated as amount realized. The court was unsympathetic to practical issues posed by this conclusion, such as the seller ceasing to exist in the interim. For further info, see [Tax Alert 2023-1446](#).

Consolidated return reg cleanup. [Proposed regulations](#) for consolidated return groups would provide broad-based changes to numerous rules to “modernize” language and reflect statutory changes made over the past 50 years. While largely non-substantive, the proposed regulations also treat as “unnecessary” an earlier proposed regulation addressing stock basis adjustments under §358 for assumptions of deductible liabilities in intercompany §351 transactions, apparently implying that stock basis should be immediately reduced, prior to the subsequent deduction by the transferee. For further info, see [Tax Alert 2023-1375](#).