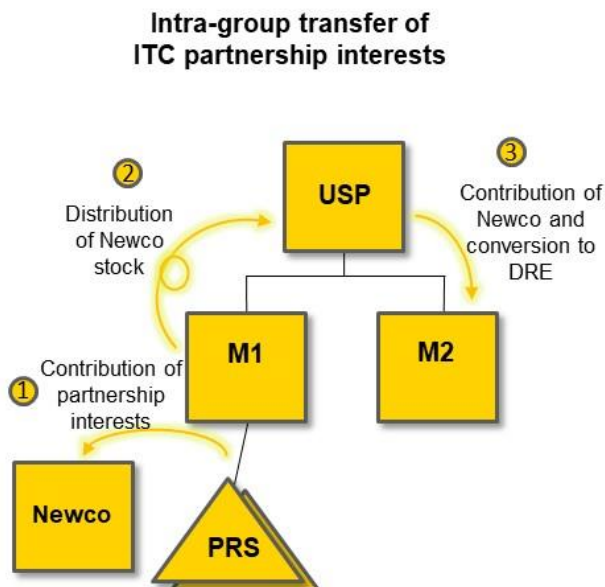


Technical Developments and Musings

Intra-group spin-off and investment tax credit recapture. [PLR 202347009](#) involves a relatively simple spin-off transaction within a consolidated group, although the focus of the ruling is not on the income tax consequences of the spin-off, including whether the transaction qualified under §355. Rather, the ruling addresses investment tax credit (ITC) recapture because the transferred property involved interests in partnerships that invest in energy property. Here, the partnership interests were contributed to a newly formed corporation, the stock of which was distributed up to the parent corporation, followed by a contribu-



tion to another first-tier subsidiary and subsequent conversion of Newco to a disregarded entity. Perhaps a ruling was sought because §50 generally provides for credit recapture, on a sliding scale within a five-year period, where a taxpayer “disposes” of investment credit property and there are no generally applicable regulations addressing transfers of partnership interests. Moreover, the closest consolidated return regulations under Reg. §1.1502-3(f)(2)(i), which generally exempt certain intercompany transfers of “section 38 property” as not being a disposition under since-repealed §47, are outdated and don’t specifically address transfers of interests in partnerships holding such property. But the IRS invoked Reg. Section 1.1502-3(f)(2)(i) to conclude that the proposed transaction will not result in any credit recapture under §50. For further info, see [Tax Alert 2023-1998](#).

Designating shares in a spin-off. Another spin-off ruling—[PLR 202344013](#)—is more typical, where the IRS ruled that a divisive transaction involving stock of a publicly traded Distributing corporation qualified for §355 nonrecognition treatment. But one of the rulings is rather rare, even though it essentially just restates the rule under §358 regulations: i.e., if a Distributing shareholder that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Controlled stock is received as a distribution with respect to, or in exchange for, a particular share of Distributing stock, the holder may designate which particular share of Controlled stock is received as a distribution with respect to, or in exchange for, a particular share of the Distributing stock, provided the designation is consistent with the terms of the distribution.

Effectively connected income through fund manager activities. In a significant opinion addressing an offshore investment fund, *YA Global Investments, LP v. Comm’r*, 161 T.C. No. 11, the Tax Court attributed activities of a domestic investment advisor to a Cayman Islands investment fund treated as a partnership for US tax purposes, finding that the partnership was not simply an investor, and that its activities were regular, continuous and directed at profit. Thus, among other things, the court concluded the fund was engaged in a US trade or business, and liable for \$1446 withholding tax on the portion of its taxable income that was effectively connected with such trade or business and allocable to foreign partners. For further info, see [Tax Alert 2023-1943](#).