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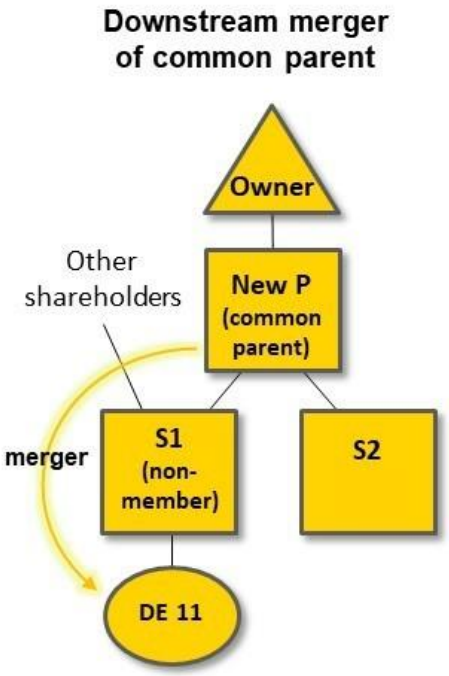
Technical Developments and Musings

Downstream merger satisfies COBE; deferred stock gain excluded. PLR 202412009 addresses a transaction involving a consolidated group parent which, through a series of nonrecognition transactions within the group, had succeeded to stock of a former member. As depicted here, S1 was the former member whose stock the common parent (New P) acquired through a series of nonrecognition transactions. The S1 stock had been the subject of an earlier intercompany distribution to which §311 applied, which created deferred intercompany gain (DIG) on such stock that might be triggered any number of ways, including if the group terminated. Meanwhile, following the creation of the DIG, S1 had become disaffiliated because some of its stock was acquired by non-members. It is not entirely clear if the group could have determined on its own, under Reg. Reg. §1.1502-13(c)(6)(ii)(C), to exclude the DIG from consolidated taxable income as a result of the proposed merger. But the regulations under Reg. §1.1502-13(c)(6)(ii)(D) provide another avenue of relief by way of a PLR, in this case addressing a downstream merger by which the former member becomes common parent of the remaining group. Perhaps one of the key representations the taxpayer made was that "no taxpayer," including the group, would derive any federal income tax benefit from DIG transaction. Also, as New P apparently was a holding company, the IRS ruled that the continuity of business enterprise requirement would be satisfied in the merger.



Greenbook proposes subjecting CFCs to stock buyback excise tax. In the corporate tax space, the Biden Administration's FY 2025 budget proposal mostly recycled the prior year Greenbook, which proposed, among other things, to increase the corporate tax rate, the corporate alternative minimum tax rate and the excise tax rate on corporate stock repurchases, or buybacks. One notable change this year on buybacks involves applicable foreign corporations (i.e., a foreign parent corporation whose stock is publicly traded). Treasury states that the excise tax should apply to specified affiliates of an applicable foreign corporation that are controlled foreign corporations (CFCs) in the same manner that it applies to specified affiliates of an applicable foreign corporation that are US corporations. The Greenbook describes CFCs as, generally, corporations whose stock is majority owned by US shareholders but taking into account stock attribution rules for this purpose. For further info, see Tax Alert 2024-0612.

Success-based fee safe harbor elections by non-parties. In PLR 202410009, the IRS granted a request for an extension of time to make the safe harbor election under Rev. Proc. 2011-29 for a success-based fee paid upon the completion of a merger. Notably, the entity making the late election is a wholly owned subsidiary of the legal acquirer and not a party to the transaction, although part of the same consolidated group as the acquirer. The ruling implies that a taxpayer that is not a party to the transaction may nevertheless be eligible to take transaction costs into account. For further info, see Tax Alert 2024-0715.

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