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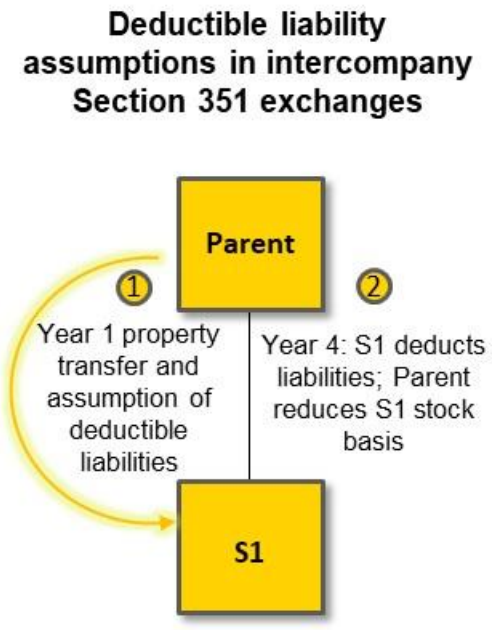
Technical Developments and Musings

Consolidated housekeeping and stock basis adjustments for deductible liabilities. In keeping with August 2023 proposed regulations, Treasury and the IRS finalized "housekeeping" regulations affecting consolidated return groups, amending a significant number of §1502 regulatory sections. Among other things, the final regulations update language and remove references to inapplicable Code provisions while incorporating more current Code provisions where applicable. While the final regulations are meant to be non-substantive, a contemporaneously-issued proposed regulation clarifies a technical issue raised by the 2023 proposed regulations: namely, the timing of transferee stock basis adjustments for the assumption of deductible liabilities described in §357(c)(3). The 2023 proposed regulations had withdrawn as "unnecessary" an earlier §357(c) rule on this point. But since §1.1502-80 turns off §357(c) in its entirety in consolidation, taxpayers might otherwise be concerned that no liabilities could technically be excluded and that an "up front" reduction in transferee stock basis under §358 would be required, even though it may be a long time, if ever, before the transferee corporation claims a deduction for the assumed liability. The Preamble to the revived proposed regulations states that the withdrawal in 2023 of §357(c) regulations "was not intended to suggest that a front-end adjustment approach is required." So, as depicted here and under the proposed regulations—generally applicable when finalized—Parent would "naturally" reduce its basis in S1 stock in Year 4, under Reg. §1.1502-32, when the assumed liability is deducted by S1, rather than at the time of Year 1 §351 property transfer to S1. For further info, see Tax Alert 2025-0121.



Step transaction invoked for corporate sale two years following incorporation. A non-precedential IRS generic legal advice memorandum (2024-005) addresses an individual US taxpayer who contributed appreciated securities to his wholly-owned S corporation and then moved to Puerto Rico. Two years later, the taxpayer caused the corporation to sell the securities. The memorandum addresses the narrow issue of the source of gain from the securities sale, with most of the analysis focused upon whether such sale qualifies for a special exclusion rule for Puerto Rican-sourced sales (§933). But the memorandum also posits an alternative theory, that in "appropriate cases," step transaction principles might apply to treat the sale of securities by the S corporation as being attributed directly to the individual taxpayer.

IRS revokes 15-year-old FIRPTA PLR. PLR 202449011 represents a relatively rare revocation of a prior PLR, in this case one that the IRS issued over 15 years earlier, albeit without retroactive effect as to the original taxpayer. The 2024 ruling states that the prior PLR issued in 2009 no longer represents the view of the IRS, considering a recently finalized regulation under §897 that "looks through" domestic entities to determine foreign ownership for purposes of foreign investment in real property. The facts of the 2009 PLR involved two domestic corporations that held interests in a real estate investment trust (REIT), where foreign persons apparently constituted a significant shareholder base of one of the domestic corporations.

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