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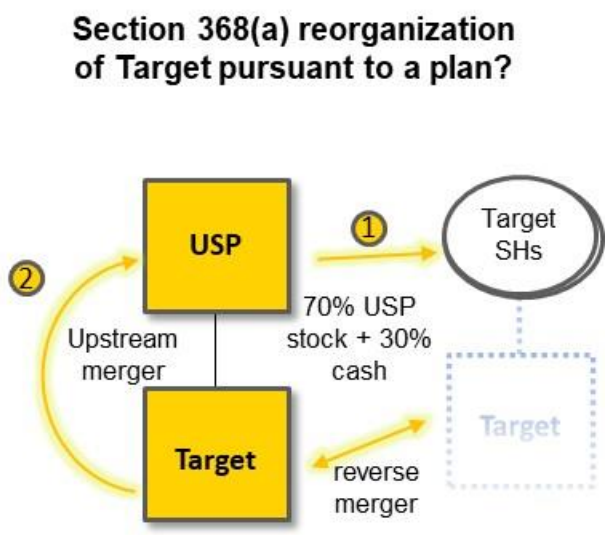
Technical Developments and Musings

Proposed regulations emphasize "definite intent" for written plans of reorganization. One of the last items of guidance from the Biden Treasury took the form of proposed regulations primarily focused on tightening the rules for effecting a tax-free corporate divisive transaction under §355. One of the ways the rules would be tightened would be by requiring a "definitive" plan of reorganization that notably would apply to all §368 reorganizations, not just divisive reorganizations under §355. Among other things, the proposed rules would require, "prior to the first step of a plan of reorganization or an original plan of re-organization that becomes the amended plan of reorganization," that one or more parties to the reorganization evidence a "definite intent to carry out the transaction through a written commitment" in official records. The rules stress formality, while also discussing the effect of the "temporal proximity" of steps in a plan of reorganization. And while a taxpayer's failure to execute a formalized plan of reorganization will not, in and of itself, cause the transaction steps to fall outside §368(a) reorganization status, the rules state that the IRS could "correct" a plan of reorganization. It is thus unclear how failure to comply with the new "plan" guidance would ultimately affect common two-step acquisitions such as the one depicted here, which is based on Rev. Rul. 2001-46. For example, would this two-step acquisition be treated as a taxable stock purchase followed by a §332 complete liquidation of the target if the second-step merger had not been identified with "definite intent" prior to the first step reverse merger? For further info, see Tax Alert 2025-0408.



Whither the stock buyback funding rule? January 2025 closed without final §4501 regulations addressing the stock buyback excise tax. Taxpayers—perhaps especially US subsidiaries of publicly traded foreign-parented groups—likely will be watching closely as to what direction the Trump Treasury might take with such regulations, and particularly whether an expansive proposed "funding rule" survives. Such rule would treat US subsidiaries within a foreign-parented group as though they purchased foreign parent stock, subjecting them to the excise tax, in cases where the US subsidiary funds, directly or indirectly, the foreign parent company's own stock buybacks, including by way of dividend distributions.

IRS: Section 269 applies to deemed incorporation of CFC. CCA 202501008 involves CFC "gap period" planning that has been the focus of other recent IRS guidance. In this case, a foreign disregarded entity of a US corporation filed a check-the-box election to be treated as a corporation (CFC) for US tax purposes while also electing a different tax year under §898(c)(2). Noting that the taxpayer offered no business purpose for the deemed incorporation, the IRS office of chief counsel concluded that §269 could apply and attribute the income of the CFC to the US taxpayer directly. Section 269 permits the IRS to disallow a deduction, credit or "other allowance" where "the principal purpose for which" the acquisition of control of a corporation "is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy."