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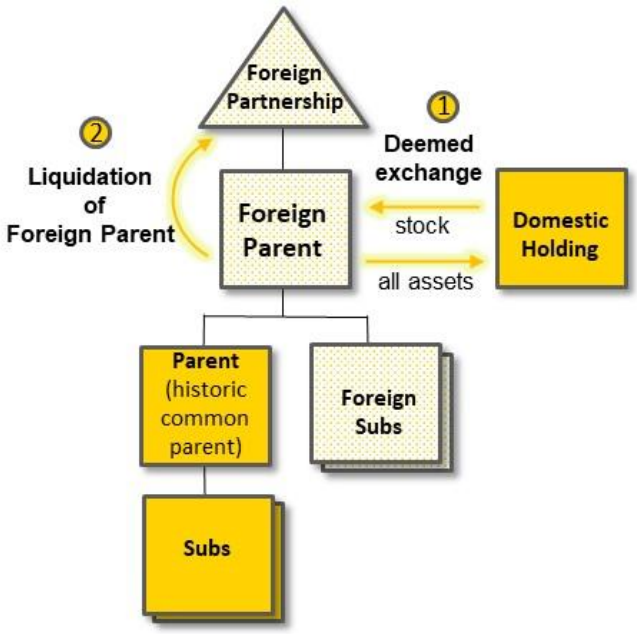
Technical Developments and Musings

Migration transaction is reverse acquisition. In PLR 202524004, the IRS made two rulings with respect to a foreign parent corporation's "migration" transaction. The IRS first concluded that such transaction was an "inbound" §368(a)(1)(F) reorganization. As a result of the reorganization, however, the US subsidiary owned by Foreign Parent would no longer be the common parent of a consolidated group, as it would be replaced by Domestic Holding, the transferee corporation in the migration reorganization transaction. Therefore, the IRS also ruled that the "deemed exchange" by Foreign Holding of all of its assets in exchange for stock of the newly formed domestic entity and assumption of liabilities, was a reverse acquisition under the consolidated return rules. Thus, the historic consolidated group would continue. While the conclusion here is similar to one reached in a prior ruling (PLR 201505006), there are more indicators as to the analytical approach used by the IRS. That is, the IRS apparently relied on an analytical "snapshot" of the traditional reorganization exchange mechanics, immediately after the §361(a) exchange, in which Foreign Parent is the "stockholder" of the "second corporation" for purposes of the requirement of Reg.§1.1502-75(d)(3) that such stockholders acquire "more than 50 percent" of the fair market value of the outstanding stock of the first corporation [Domestic Holding] as a result of owning stock of such "second corporation." (As Foreign Parent held other assets, there was a taxpayer representation as to this point.) This analytical "snapshot" also is supported by an IRS conclusion that the deemed liquidation of Foreign Parent will have no effect on the reverse acquisition.



CAMT notice provides interim relief. In Notice 2025-27, the IRS provides "interim guidance" regarding the application of the corporate alternative minimum tax (CAMT) rules. Among other things, the notice provides an optional "simplified" method for determining applicable corporation status. Under the statute, a corporation (other than an S corporation, regulated investment company, or real estate investment trust) is generally an applicable corporation for a tax year if the corporation's average annual adjusted financial statement income exceeds $1 billion for any three consecutive tax years. The interim guidance for applicable corporation determinations raises the relevant average annual financial statement income test thresholds from what had been set forth in proposed regulations, from 50% to 80% of the statutory amounts. Consequently, this new safe harbor is expected to decrease the number of corporations treated as CAMT applicable corporations under the simplified method. For further info, see Tax Alert 2025-1244.

Break fee is deductible. In a full opinion, the US Tax Court concluded that AbbVie, Inc. could deduct a nearly $1.6 billion merger termination fee it paid in 2014 to a foreign company with whom it had discussed a potential merger. The court rejected an IRS argument that the break fee should be a capital loss under §1234A. For further info, see *AbbVie v. Comm'r,* 164 T.C, No. 10 (2025).

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