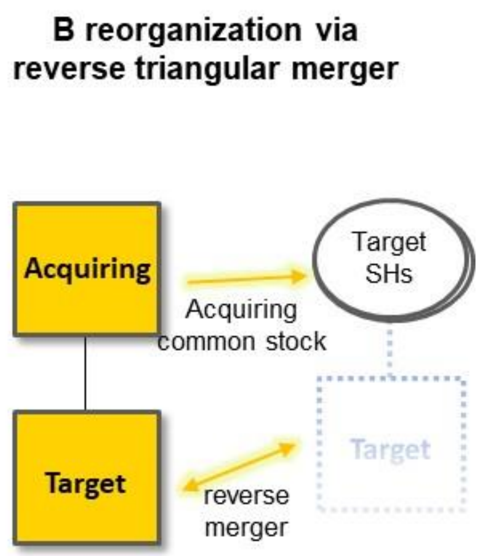
Tax M&A Update
National Tax M&A
International Tax and Transaction Services

Vol. XIV, Issue 12 August 2025

Technical Developments and Musings

The rare B reorganization ruling. A recent private letter ruling—202531001—involves the combining of two domestic publicly traded companies, which the IRS ruled would qualify for nonrecognition treatment as a §368(a) reorganization. But unlike most acquisitive reorganizations involving publicly traded entities, this reorganization was more specifically under §368(a)(1)(B), the most stringent of all §368(a) acquisitive reorganization types in that it requires the controlling acquisition by the acquiring corporation of the target "solely for all or a part of its voting stock." As the US Supreme Court famously observed, "solely" leaves no leeway; any "boot" in the form of cash or other nonqualifying consideration will prevent an acquisition from qualifying as a B reorganization. (There is a narrow exception for cash payment in lieu of issuing fractional shares.) In this case, Acquiring had made advances to the Target group to enable it to continue delivering products to the Acquiring group; such cash advances, however, were used to fund ordinary operations and not for distributions, redemptions or other payments to Target shareholders and thus presumably are not treated as acquisition consideration. Further, the transaction was structured as a reverse triangular merger, using a newly formed merger subsidiary; because the Target shareholders received Acquiring common stock, such transaction might also be expected to qualify as a §368(a)(2)(E) reorganization, which has somewhat more relaxed boot standards. But the Target group was in the process of divesting one or more businesses, and perhaps the merger would not have satisfied §368(a)(2)(E) "substantially all" requirements. In any event, the IRS ruled that the proposed transaction will be a B reorganization, enabling, among other things, the tax-free exchange under §354(a) of Target shares for Acquiring shares.



Stapled instruments treated as single class of stock. Another recent ruling—202532005—involves a corporation that, as part of a recapitalization of existing common stock, issued a new class of participating preferred stock that by its terms is "stapled " to the common stock; thus, neither class can be transferred without the other. Apparently, state law would not have permitted an actual exchange of existing common stock for new common stock. The IRS concluded that the separate issuance of the preferred stock will be ignored and instead treated as an exchange of outstanding exiting common stock for a single class of newly issued common stock, which qualifies as a §368(a)(1)(E) reorganization as well as a §1036 exchange.

FIRPTA rules to be eased for certain inbound F reorganizations. In Notice 2025-45, the government announced plans to relax the rules addressing foreign investment in US real property (i.e., the FIRPTA rules), which are currently implicated in the case of inbound §368(a)(1)(F) reorganizations of publicly traded entities. The notice states that current FIRPTA rules "may serve as an impediment to publicly traded foreign corporations redomiciling into the United States." Thus, the forthcoming proposed rules would apply an exception to gain recognition under current FIRPTA rules for certain "covered" inbound asset reorganizations under §368(a)(1)(F). For further info, see Tax Alert 2025-1742.