GEORGETOWN UNIVERSITY LAW SCHOOL

FEDERAL CORPORATE INCOME TAX LAW II

Course Syllabus – Fall 2016

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Corporate Income Tax Law II will meet Tuesdays from 5:45 p.m. until 7:45 p.m.
Room: Hotung 1008

The course materials are:

1. The Internal Revenue Code and Regulations

2. Cases and rulings on provided CD and available online at The Law Center.

Credit will be given for participating in classroom discussion

Open note examination.
LECTURES

1. Aug. 30 & Sept. 6: Mergers (Type “A” Reorganizations); Continuity of Business Enterprise and Continuity of Proprietary Interest; Disregarded Entities (AME)
2. Sept. 13 & 20: Boot (Existence, Computation, Capital Gain vs. Dividend); Corporate Gain; Asset and Stock Basis; Holding Period (AME)
3. Sept. 27: Post-Reorganization Restructuring (Allowable and Disqualifying Distributions and Transfers) (AME)
5. Oct. 18: The “C” Reorganization; Acquisition of Substantially All Assets and Solely for Voting Stock and the “B” Reorganization; Solely for Voting Stock (MAS)
6. Oct. 25: Triangular Mergers (Forward and Reverse Subsidiary Mergers, Triangular B’s and C’s) (MAS)
7. Nov. 1: The “E” and “F” Reorganizations (The Single Entity Reorganizations) (MAS)
8. Nov. 8: Introduction to Section 355 Distributions (MAS)
9. Nov. 15: Section 355 Distributions (Continued) (MAS)
10. Nov. 22: Section 355 Distributions (Continued) (MAS)
11. Nov. 29: The Step Transaction and Substance over Form Doctrines; Economic Substance in Reorganization Transactions (MAS)
12. Dec. 3 [or TBD]: Review Session
Lecture 1: Mergers and the Continuity of Business Enterprise and Continuity of Proprietary Interest Requirements; Disregarded Entities

Mergers under statutory law can be subject to tax-free treatment if described as a reorganization in IRC Section 368(a)(1)(A). To be described in Section 368(a)(1)(A), certain requirements must be satisfied, including continuity of proprietary interest and continuity of business enterprise. This Lecture will address these requirements. Additional topics include: how post-acquisition asset transfers affect reorganization qualification and whether to respect direction of merger.

Code and Regulations:

- IRC §§ 368(a)(1)(A) and 368(b)
- Treas. Reg. §§ 1.368-1(a) - (e)(1), Treas. Reg. § 1.368-1(e)(2)(i) – (iv) and Example 1 of clause (v).
- Treas. Reg. §§ 1.368-2(a) and (b)(1)(i), (ii), and Examples 1 and 2 of clause (iii).

Cases and Rulings:

1. Revenue Ruling 69-6
2. Revenue Ruling 69-3
3. Cortland Specialty Co. v. Commissioner, 60 F.2d 937 (2d Cir. 1932)
4. Pinnellas Ice and Cold Storage Co. v. Commissioner, 287 U.S. 462 (1933)
6. Revenue Ruling 66-224
7. McDonald’s Restaurant of Illinois, Inc. v. Commissioner, 688 F.2d 520 (7th Cir. 1982)
8. Revenue Ruling 66-23
9. Revenue Ruling 78-142
10. Laure v. Commissioner, 653 F.2d 253 (6th Cir. 1981)
12. Revenue Ruling 81-25
13. Revenue Ruling 87-76
14. Revenue Ruling 85-197
15. Revenue Ruling 85-198
16. Revenue Ruling 70-223
Lecture 2: Boot (Existence, Computation, Capital Gain vs. Dividend); Corporate Gain; Asset and Stock Basis; Holding Period

Once the determination is made that the transaction constitutes a reorganization as defined in section 368(a), the operating rules must be applied to determine the taxability to all the parties and the basis and holding period in the stock and property received.

Code and Regulations

IRC §§ 1001(a)-(c), 351(g), 354(a)(1) and (2), 356(a)(1) and (2), 356(c) - (e); 357(a), 358(a), 361(a)-(c), 1223(1) and (2)

Treas. Reg. §§ 1.354-1(d), 1.356-1(a) - (d), 1.358-1 through 1.358-3
Prop. Reg. §1.358-2(b)

Cases and Rulings:

1. Revenue Ruling 72-343
2. Revenue Ruling 74-515
3. Revenue Ruling 68-23
4. Revenue Ruling 75-83
5. Revenue Ruling 71-364
7. Revenue Ruling 93-61
Lecture 3: Post-Reorganization Restructuring (Allowable and Disqualifying Distributions and Transfers)

There are limited situations where either assets or stock acquired in a reorganization may be transferred and retransferred without such transfers causing a violation of the reorganization requirements. Transfers such as “Drop Downs,” which are transfers to controlled subsidiaries, are statutorily allowed, but there are other types of transfers that are allowed by regulation.

Code and Regulations:

IRC § 368(a)(2)(C) and §368(c); and
Treas. Reg. §1.368-2(b), (f), (j) and (k).

Cases and Rulings:

3. Revenue Procedure 77-37, Section 3.01
4. Revenue Ruling 58-93
5. Revenue Ruling 68-261
Lecture 4:  The Acquisitive “D” Reorganization (Related Party Reorganizations)

The common controlled entity reorganization. Acquisitive D reorganizations enacted to combat liquidation-reincorporation abuses. The requirements and effects to the parties of the acquisitive D reorganization.

Code and Regulations:

IRC §§ 368(a)(1)(D), 354(b), 368(a)(2)(H)
Treas. Reg. § 1.368-1(b), Treas. Reg. § 1.368-2(l)

Cases and Rulings:

1. J.E. Smothers v. United States, 642 F.2d 894 (5th Cir. 1981)
2. E. Robert Breech v. United States, 439 F.2d 409 (9th Cir. 1971)
3. J.E. Davant v. Commissioner, 366 F.2d 874 (5th Cir. 1966)
4. Revenue Ruling 76-108
5. Revenue Ruling 70-240
6. Revenue Ruling 2002-85
7. Revenue Ruling 2004-83 (Situation 1 only)
8. Revenue Procedure 89-50
9. Revenue Ruling 2007-8
Lecture 5: The “C” Reorganization; Acquisition of Substantially All Assets and Solely for Voting Stock

The “practical merger.” Topics include the “substantially all” requirement, the “solely for voting stock” requirement, the “boot relaxation” rule, the special problem of liabilities, and the Bausch & Lomb problem and overriding regulations.

Code and Regulations:

IRC §§ 368(a)(1)(C), 368(a)(2)(B), 368(a)(2)(G), 368(b)
Treas. Reg. § 1.368-2(d)

Cases and Rulings:

1. Revenue Ruling 73-102
2. Revenue Ruling 70-107
3. Revenue Ruling 88-48
4. Helvering v. Elkhorn Coal, 95 F.2d 732 (4th Cir. 1937)
5. Revenue Ruling 57-518
6. Preamble to Proposed “Bausch & Lomb” regulations (June 14, 1999)
7. Revenue Ruling 78-47
8. Revenue Ruling 85-138
9. Revenue Procedure 89-50
10. Revenue Ruling 69-265
11. Revenue Ruling 64-73
Lecture 5 (con’t): The B Reorganization; Solely for Voting Stock

The unforgiving “solely for voting stock” requirement. When can the target shareholders receive other property as part of a “B” reorganization?

**Code and Regulations:**

IRC §§ 368(a)(1)(B), 358(b)(1)
Treas. Reg. §§ 1.368-2(c) and 1.358-6

**Rulings:**

2. Revenue Ruling 75-123
3. Revenue Ruling 68-285
4. Revenue Ruling 75-360
5. Revenue Ruling 79-89
6. Revenue Ruling 66-365
7. Revenue Ruling 68-562
8. Revenue Ruling 85-139
9. GCM 38844 (April 27, 1982)
10. Revenue Ruling 67-448
Lecture 6: Triangular Mergers: (Forward and Reverse Subsidiary Mergers, Triangular B’s and C’s)

For various non-tax business reasons, mergers started to take triangular form (stock or assets are acquired by a subsidiary of the issuing company). These types of mergers were not historically described as those allowed tax-free treatment. However, the law has evolved to allow tax-free treatment for these types of mergers.

Code and Regulations:

- IRC §§ 368(a)(2)(D), 368(a)(2)(E)
- Treas. Reg. §§§ 1.368-2(b)(2), 1.368-2(j), and 1.358-6

Cases and Rulings:

1. Revenue Ruling 74-297
2. Revenue Ruling 72-576
3. Revenue Ruling 2001-24
4. Revenue Ruling 2001-25
Lecture 7: The “E” and “F” Reorganizations (The Single Entity Reorganizations)

Single entity reorganizations: recapitalizations and mere changes in form.

**Code and Regulations:**

IRC §§ 368(a)(1)(E), 368(a)(1)(F)
Treas. Reg. §§ 1.301-1(l), 1.368-1(b), 1.368-2(e) and § 1.368-2(m)

**Cases and Rulings:**

1. **Bazley v. Commissioner**, 331 U.S. 737 (1947)
2. Revenue Ruling 74-269
3. Revenue Ruling 72-265
4. Revenue Ruling 69-135
5. Revenue Ruling 57-276
6. Revenue Ruling 66-284
7. Revenue Ruling 58-422
9. Revenue Ruling 96-29
10. Revenue Ruling 2003-48
Lecture 8: Introduction to Section 355 Distributions

Introduction to spin-offs, split-offs, and split-ups (tax-free distributions of stock). Divisive “D” reorganizations. Basic requirements of a tax-free distribution, including the business purpose requirement, the device prohibition, and the continuity of interest requirement.

Code and Regulations:

IRC §§ 355, 357(c), 368(a)(1)(D), 368(a)(2)(H)
Treas. Reg. §§ 1.355-1 through 1.355-5

Cases and Rulings:

2. Revenue Ruling 88-34
3. Revenue Ruling 72-530
4. Revenue Ruling 82-131
5. Revenue Ruling 76-187
6. Revenue Ruling 82-130
7. Revenue Ruling 76-527
8. Revenue Ruling 2003-52
9. Revenue Ruling 2003-74
10. Revenue Ruling 2003-75
11. Revenue Ruling 2003-110
12. Revenue Ruling 2003-55
13. Revenue Ruling 2004-23
Lectures 9 & 10: Section 355 Distributions (Continued)

Topics include the 80 percent pre-distribution control requirement, the distribution of control requirement, retention of stock, the active trade or business requirement, and Morris Trust acquisitions.

Code and Regulations:

IRC §§ 355, 354, 356, 358, 361
Treas. Reg. §§ 1.355-1 through 1.355-5, 1.358-2

Cases and Rulings:

1. Revenue Ruling 63-260
2. Revenue Ruling 69-407
3. Revenue Ruling 98-27
4. Revenue Ruling 98-44
5. Revenue Ruling 75-321
6. Lockwood’s Estate v. Commissioner, 350 F.2d 712 (8th Cir. 1965)
7. Revenue Ruling 66-204
8. Revenue Ruling 74-79
9. Revenue Ruling 2003-18
10. Revenue Ruling 2003-38
11. Revenue Ruling 2002-49
12. Revenue Ruling 2007-42
13. Revenue Ruling 69-461
14. Revenue Ruling 78-442
15. Revenue Ruling 2003-79
16. Revenue Ruling 93-62
Lecture 11: The Step Transaction and Substance Over Form Doctrines; Economic Substance in Reorganization Transactions

The Step Transaction Doctrine - The determination that a series of formally separate steps are pursuant to an integrated plan can result in the integration of those steps.

The Substance Over Form Doctrine - Once it is determined that a series of steps are properly integrated, the next step is to determine whether the form chosen (i.e., the actual steps) should be recharacterized (i.e., recast) to more appropriately determine the substance of the overall transaction.

The Economic Substance Doctrine – Previously a common law doctrine which has since been codified, in an effort to raise revenue Congress imposed as much as a 40 percent penalty on taxpayers taking losses and deduction that lack “economic substance.” A brief review of this now codified rule (and the common law doctrine that created it) will illustrate its importance as it related to all M&A transactions.

Code

IRC § 7701(o)(1) and (2)

Cases and Rulings:

1. Revenue Ruling 83-142
2. King Enterprises, Inc. v. United States, 189 Ct. Cl. 466 (1969)
3. Revenue Ruling 67-274
4. Revenue Ruling 67-448
5. Revenue Ruling 72-405
6. Revenue Ruling 90-95
7. Revenue Ruling 2001-26
8. Revenue Ruling 2001-46
9. Revenue Ruling 2004-83
10. Revenue Ruling 2008-25
11. Revenue Ruling 2015-9
12. Revenue Ruling 2015-10