TAX PROVISIONS IN M&A TRANSACTIONS

PHILADELPHIA BAR ASSOCIATION

TAX SECTION

SEPTEMBER 21, 2022

PANELISTS

Panelists

- Kenneth C. Wang, Esq. – Partner, Stradley, Ronon Stevens & Young LLP
- Morgan Klinzing, Esq. – Associate, Troutman Pepper
- M. Jared Sanders, Esq. – Associate, Morgan, Lewis & Bockius LLP

Moderator

- Andreas N. Andrews, Esq. – Morgan, Lewis & Bockius LLP

AGENDA

- Introduction
- Structuring M&A Transactions
- Indemnification
- Representations & Warranties
- Covenants
- Questions

STRUCTURING M&A TRANSACTIONS

KEY THEMES INFLUENCING ACQUISITION STRUCTURE

- ***What is being used as consideration?***
- ***What is being bought/sold?***
- ***Who is buying/selling?***
- Taxable or Tax-Deferred (largely informed by above)
- Preference/Expectations/Goals of the Parties (Tax and non-Tax)
- General Commercial or Non-Tax Concerns or Sensitivities
- The Stage at Which the Tax Lawyers get Involved

WHAT IS BEING USED AS CONSIDERATION?

- Cash vs. Equity of Buyer Entity (or combination thereof).
- **<u>THE</u>** key factor.
- Parties (and investment bankers) generally expect for equity-exchange portion of transaction to receive tax-deferred treatment.
- Corporate Stock as Consideration: In most cases, will need at least 40% of consideration to be stock for the stock portion to be treated as tax-free.
- Presence of "earn-out" can impact structure.

WHAT IS BEING BOUGHT/SOLD?

- Two ways to acquire a company – acquire its assets or acquire its equity
- Many non-tax differences. For example:
  - Successor liability
  - Transactional difficulties
- **Tax-deferred:** Asset deals have similar tax consequences as equity deals, though may have different requirements to achieve tax-deferred classification.
- **Taxable**: Asset deal has ***very*** different consequences from a stock deal.
- These differences can be less pronounced when acquiring partnership interests.

WHO IS BUYING/SELLING?

- Tax Classification of the Target (and Buyer)
  - "Disregarded entity" (*i.e.* asset sale)
  - Partnership
  - C Corporation
  - S Corporation
- Jurisdiction of Parties
  - U.S. vs. Non-U.S.
  - State (*e.g.*, S Corp sensitivities)
- Structure of Parties
  - Corporate or Pass-Through
  - Member of a consolidated group?
  - Multiple targets?
- Combination of the above

TAXABLE OR TAX-DEFERRED

- Key Differences: Tax and Basis
- Tax-Deferred: Consequences
  - Seller: No Taxes (Good!); Buyer: No Basis "Step-Up" (Bad!)
  - Often higher tax structuring sensitivities associated with qualification for tax-deferred treatment.
- Taxable: Consequences
  - Seller: Taxes (Bad!); Buyer: Basis "Step-Up" (Good!)
  - Tax structuring is still important, but for different reasons (often, basis).
    - It is usually preferred, where possible, that the "step-up" in tax basis occur at the asset-level (*i.e.* for items that produce depreciation/amortization deductions).
- Can, and in many cases does, impact total purchase price.

TAXABLE TRANSACTIONS

- Sellers generally prefer sale of equity.
  - May result in milder tax consequences (*e.g.* no second layer of tax or ordinary income from "hot" assets in stock sales).
  - Less administrative difficulty.
- Buyers generally prefer purchasing assets.
  - Benefit through "step up" in basis of assets (*i.e.* future depreciation/amortization).
  - Less concern regarding historic liabilities (including tax liabilities) apart from successor or transferee liability concerns.

TAXABLE EQUITY TRANSACTIONS
COMMON BUYER GOAL:
MAKE IT AN ASSET TRANSACTION

- Target is a C Corporation
  - Forward Merger
    - Rev. Rul. 69-6. Treated as asset sale followed by liquidation of target.
  - Deemed asset sale election under Section 338(h)(10) can only be made if being sold out of a consolidated group and there is "qualified stock purchase."
- Target is an S Corporation
  - Can be achieved through a "Section 338(h)(10) Election."
  - Pre-closing "F" reorganization.
- Target is a Partnership
  - Rev. Rul. 99-6: Acquisition of 100% of equity interest to single buyer treated as an asset sale to buyer (partnership collapses into disregarded entity).
  - If the partnership continues with multiple owners, then if it has (a) made a "Section 954" election or (b) has "substantial built-in loss", acquirer will get a special basis adjustment under Section 743 that mimics, to the acquiring partner, a "step-up" in the basis of the partnership assets.

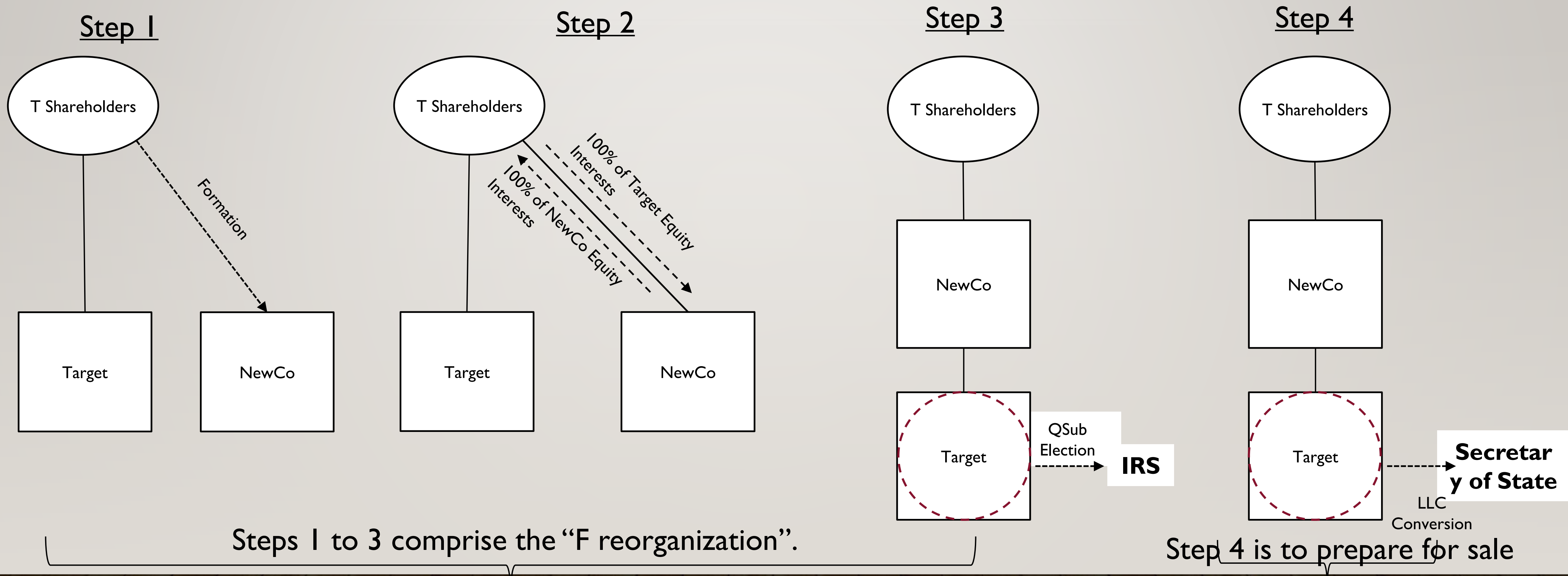
S CORP OR CONSOLIDATED C CORP SUBSIDIARY TARGET: SECTION 338(H)(10) ELECTION

- Joint election by buyer and seller(s).
- Requires Qualified Stock Purchase ("QSP").
  - "[A]ny transaction or series of transactions in which stock (meeting the requirements of §1504(a)(2)) of one corporation is acquired by another corporation by purchase during the 12-month acquisition period." Section 338(d)(3).
  - "Purchase" means any acquisition of stock where (1) there is no carry-over basis, (2) Sections 351, 354, 355 and 356 do not apply, and (3) acquired stock is not attributed to the buyer under Section 318.
- Creates a fictional asset sale for U.S. federal income tax purposes. Section 1.338(h)(10)-1(d).
  - Target corp ("Old T") is treated as though it had sold (prior to the close of the acquisition) all its assets, subject to its liabilities, to a newly formed corporation ("New T") in an amount equal to their fair market value.
  - Following this deemed sale (and prior to the close of the acquisition), Old T is deemed to liquidated.
  - New T remains liable for tax liabilities of Old T.

S CORP TARGET: PRE-CLOSING F REORGANIZATION

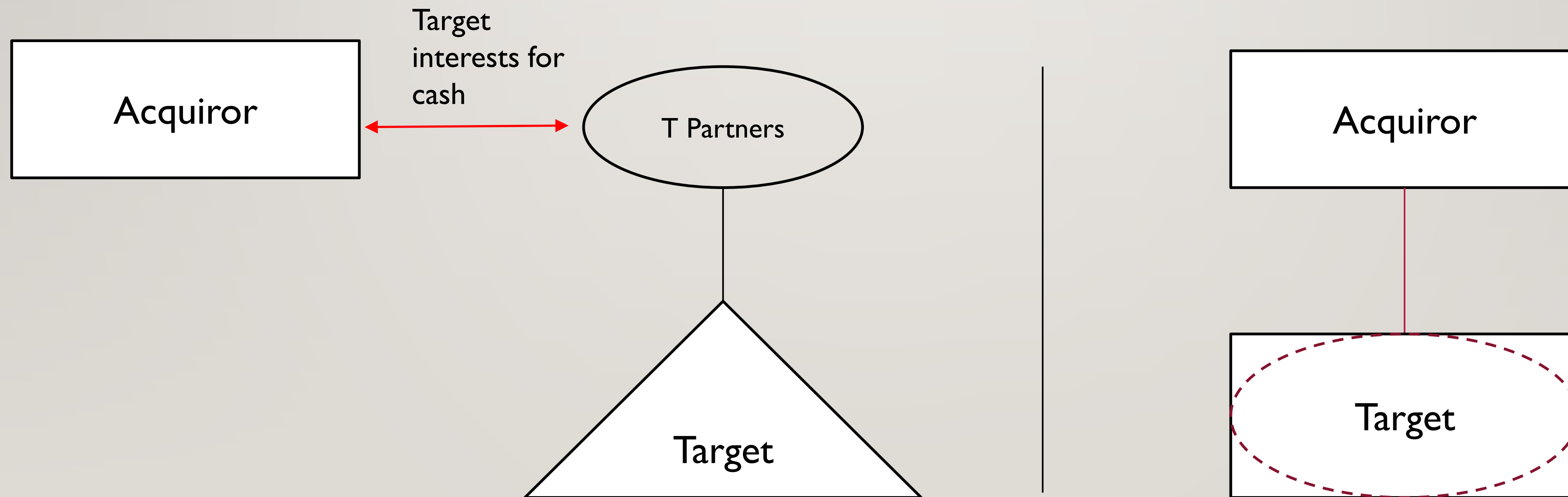
- The step-up in asset basis associated with a Section 338(h)(10) election is jeopardized by historic S corp compliance issues. If the entity is not an S corp, a Section 338(h)(10) election is invalid and buyer loses asset basis "step-up".
  - Single class of stock, eligible shareholders, filing requirements, state law requirements (community property states).
- Solution: Pre-Closing F Reorg
  - Section 368(a)(1)(F): "a mere change in identity, form, or place of organization of one corporation, however effected."
- Importantly, the resulting asset sale is not threatened by historic s corp compliance.
- F Reorganization structure allows the federal "S Corp" to be left with sellers, for the historic state law entity to be transferred in a deemed asset sale, and for that entity to keep its EIN.
- Won't be integrated with sale transaction due to "F in a bubble" rule. Section 1.368-2(m)(3)(ii).

S CORP TARGET: PRE-CLOSING F REORG



PARTNERSHIP TARGET
"99-6 TRANSACTION"

- T Partners: Treated as sale of a partnership interest under Section 741.
- Acquiror: T partners treated as if target made a liquidating distribution followed by purchase of Target assets by Acquiror.

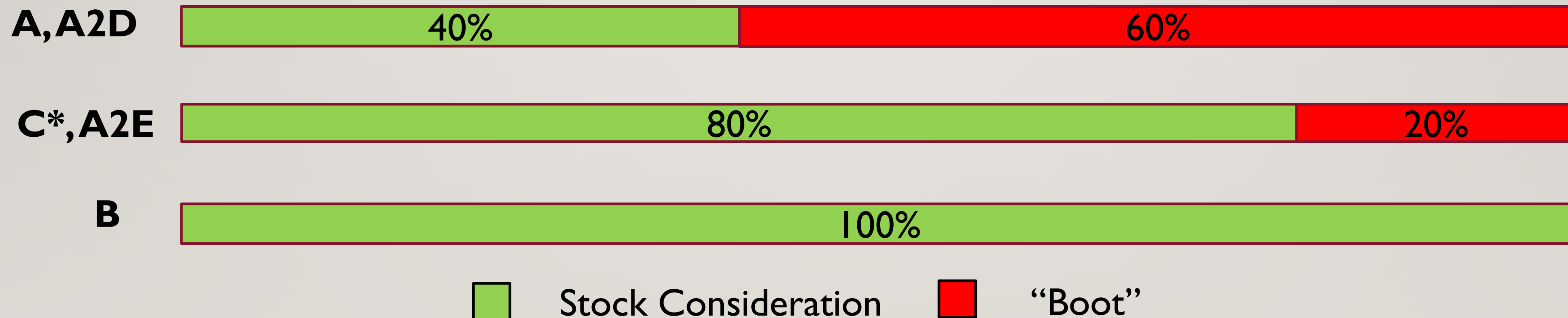


TAX-DEFERRED TRANSACTIONS

- Common Forms of Achieving Tax-Deferral
  - Reorganizations under Section 368 (corporate acquiror, corporate target)
    - Numerous statutory and regulatory requirements
  - Contributions under Section 351 (corporate acquiror, any target)
    - Requires that transferors be in "Section 368(c) control" following transfers
    - Rev. Rul. 84-111: Corporation acquiring partnership
  - Contributions under Section 721 (partnership acquiror, any target)
  - Section 1202 – Qualified Small Business Stock (Tax-free, not deferred)

TAX-DEFERRED STOCK TRANSACTIONS THRESHOLDS

Satisfaction of the reorganization "forms" under Section 368 requires certain amount of equity consideration of the Buyer (or the Buyer's parent corporation) (among other requirements):



OTHER STATUTORY REQUIREMENTS OF REORGANIZATIONS

Type	Description	Consideration	Requires Transfer of "Substantially All the Assets"	Other
A Reorganization	State Law Merger	At least 40% in stock*	No	
B Reorganization	Stock Acquisition or Reverse Triangular Merger	Soley voting stock (of acuiror or parent)	No	Must "Control" after acquisition
C Reorganization	Asset Acquisition	Solely voting stock (of acquiror or parent) – subject to 20% "boot relaxation"	Yes	Target must liquidate
A2D Reorganization	Forward Triangular Merger	At least 40% in stock (of parent)*	Yes	
A2E Reorganization	Reverse Triangular Merger	Voting stock of parent in exchange for "Control"	Yes	Must acquire "Control"

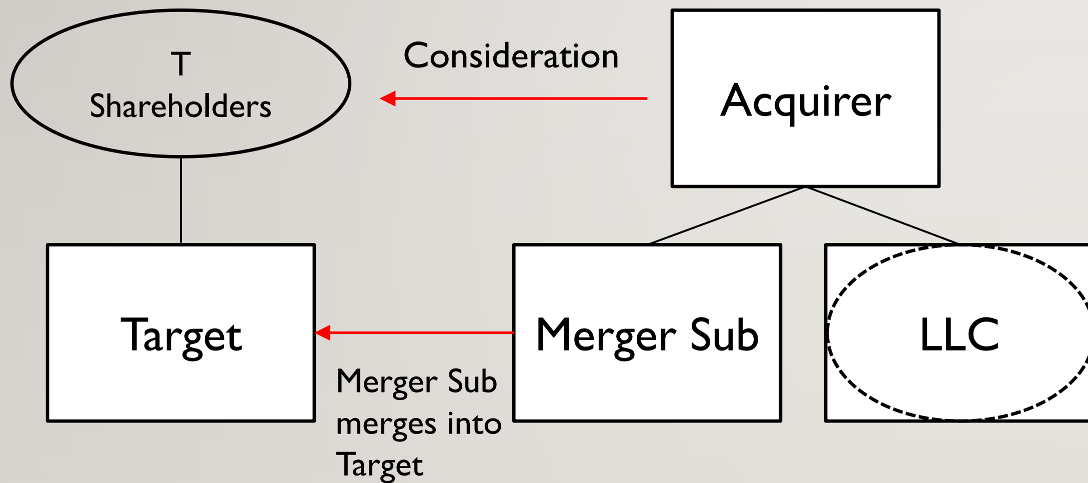
*** There is no actual statutory consideration requirement for A or A2D reorganizations. However, "continuity of interest" (a regulatory requirement for most forms of reorganizations) generally requires at least 40% of consideration be comprised of stock.**

PROTECTIVE ACTION: TWO-STEP REORGANIZATIONS

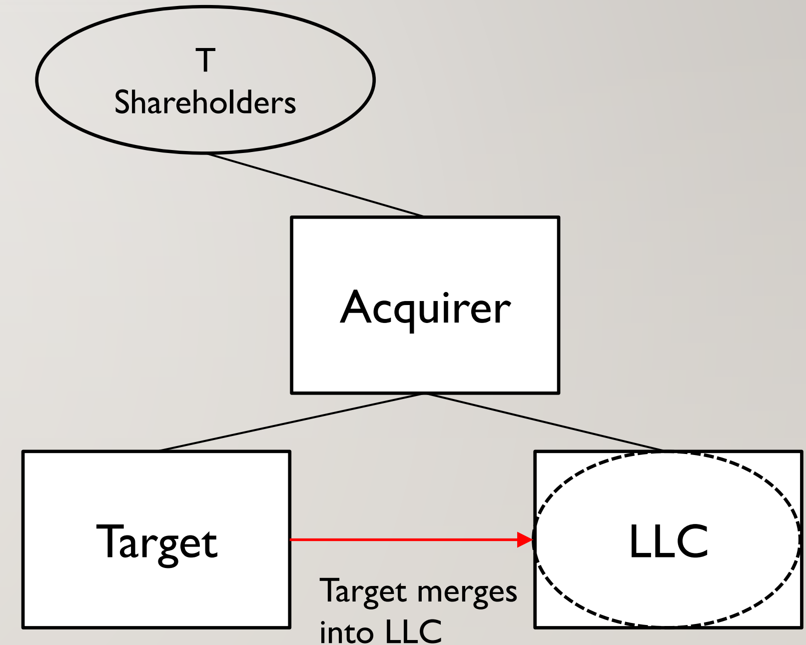
- Two-step merger structures that, when integrated, are treated as single reorganizations.
  - Prior Law (*Kimbell-Diamond* Doctrine): Purchase of stock followed by liquidation of target into parent is treated as purchase of assets.
  - Rev. Rul. 90-95; Rev. Rul. 2001-26; Rev. Rul. 2001-46; Rev. Rul. 2008-25.
- This has become a common structure because if integrated "reorganization" treatment fails, there is no corporate-level gain.
- When you need it:
  - Certain earn-outs or other post-closing adjustment
  - Less stock consideration
  - Other infirmities in the regulatory requirements of the reorganization provisions

TWO-STEP REORGANIZATION
REV. RUL. 2001-46 – INTEGRATED "A" REORGANIZATION

Step 1 (Reverse Triangular)



Step 2 (Forward)



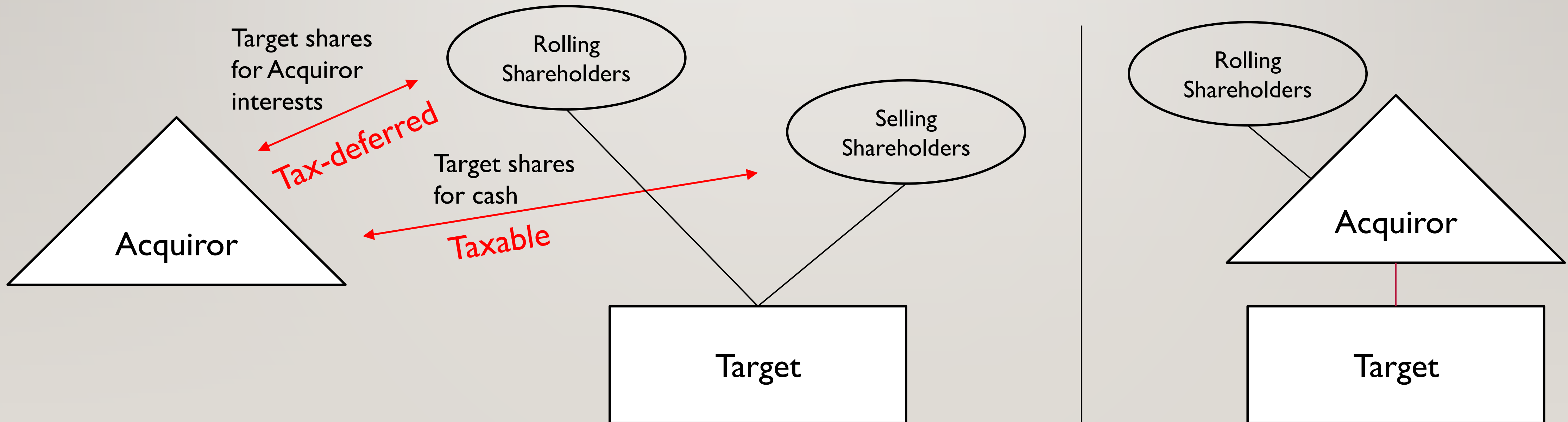
Variations: (a) Second step merger into parent (same treatment)

(b) Second Step liquidation (integrated "C" reorganization)

(c) Second Step sideways merger into Merger Sub 2 (integrated "A2D" reorganization)

PARTNERSHIP ACQUIRER

- Adds flexibility to equity portion of transaction. Unlike in corporate solution, may have essentially any portion of transaction comprised of "equity for equity" and receive tax-free treatment for such equity exchange under Section 721 of the Code.



HOLDING COMPANY STRUCTURES

- Generally, results in new entity as holding company to two formerly separate businesses.
  - Holding company acquires each company for package of consideration consisting, in part, of equity in holding company. Relative consideration reflects relative size.
- Can be used for "combination of equals"
- Generally utilizes Section 351 (corporation) or Section 721 (partnership)
- E.g., "Double Dummy"
  - New holding company acquires stock of each corporation for stock of holding company, effected through concurrent reverse triangular mergers. (Section 351 treatment when integrated).

JOINT VENTURE STRUCTURES

- Unlike holding company structures, involves the combination of a subset of the companies' assets (or, in some cases, the infusion of cash by one party into an existing business).
- Use of a corporate JV may present lack-of consolidation issues that may result in tax leakage via dividends and inability to offset income and deduction between the companies and the JV.
- These issues are in many cases solved by using a partnership JV.

INDEMNIFICATION

LINE ITEM TAX INDEMNITY

- Our-watch, your-watch construct.
  - Seller is responsible for taxes for pre-closing periods and buyer is responsible for taxes for post-closing periods.
  - Need to allocate taxes between pre-closing and post-closing periods.
  - Ensure that the tax obligation matches transaction structure.
- Sample
  - (A) all Taxes (or the non-payment thereof) of each of the Company and its Subsidiaries for all Pre-Closing Tax Periods, including the portion of a Straddle Period through the end of the Closing Date (allocated in accordance with Section X),
    - If there are foreign subsidiaries, consider impact of GILTI and Subpart F inclusions.
  - (B) any Taxes imposed on a third party that the Company or its Subsidiaries was required to withhold and pay over to a Tax authority and
  - (C) Taxes imposed on or payable by another Person that are imposed on the Company or its Subsidiaries as a transferee or successor, or by Contract or Law, arising out of a transaction or event occurring, or Contract entered into, prior to Closing,
  - in each case, to the extent in excess of the amount of the applicable Tax included in the final determination of the Adjusted Purchase Price

PAYMENT OF PRE-CLOSING TAXES

- Covenant to pay taxes when due/returns are filed.
- Deduct to the purchase price.
  - Typically NWC includes non-income taxes.
  - Often income taxes will flow through Indebtedness.
    - Ensure no collars on Indebtedness. Tax should be a dollar-for-dollar adjustment.

INCOME TAXES THROUGH INDEBTEDNESS

- “Accrued Income Taxes” means an amount, which may not be negative, equal to the unpaid income Tax liabilities of the Acquired Entities for the period beginning on January 1, 2022 and ending on the Closing Date (including arising out of transactions contemplated by this Agreement) in the jurisdictions in which the Acquired Entities have historically filed income Tax Returns or in which the Acquired Companies commenced activities and became subject to income Tax on or after January 1, 2021;
- provided that for purposes of computing the amount of Accrued Income Taxes,
  - (i) such liability for income Taxes will be calculated in accordance with the past practices (including reporting positions, elections, and accounting methods) of the Acquired Entities in preparing Tax Returns for income Taxes,
  - (ii) Transaction Deductions shall be taken into account,
  - (iii) all deferred income Tax liabilities and assets shall be excluded,
  - (iii) any liabilities for accruals or reserves established or required to be established under GAAP methodologies that require the accrual for contingent income Taxes or with respect to uncertain Tax positions and any liabilities arising from any change in accounting methods made after the Closing Date by Purchaser will be excluded,
  - (iv) items with respect to a Straddle Period shall be allocated in accordance with Section X,
  - (v) any income Taxes attributable to transactions outside the Ordinary Course of Business on the Closing Date after the time of the Closing will be excluded, and
  - (vi) a Tax asset shall only reduce or offset a Tax liability to the extent such Tax asset is of the same type and jurisdiction as such Tax liability (e.g., an income Tax asset shall only reduce or offset an income Tax liability and, similarly, a state Tax asset shall not offset or reduce a Tax liability imposed by another state or any other jurisdiction).

GENERAL CONSIDERATIONS

- Survival Periods
- Baskets/Caps
- Public target – usually no indemnity
- Tax Effecting Indemnification Payments
- Deal Specific Considerations
  - For example, for acquisitions of an S corp with a Section 338(h)(10) election, typically have indemnity if the Section 338(h)(10) election is invalid as a result of Target failing to maintain S status.

SECURING THE INDEMNIFICATION OBLIGATION

- Rights are only as good as the ability to collect.
- Holdbacks
- Escrows

ASSET DEAL OVERLAY

- Pre-Closing Taxes are typically an Excluded Liability.
  - any Liabilities of the Selling Group for
    - (i) Taxes imposed on any member of the Selling Group, including as a direct result of the Contemplated Transactions,
    - (ii) Transfer Taxes for which the Selling Group is responsible under Section X, and
    - (iii) Taxes imposed with respect to the Selling Group's operation of the Business or ownership of the Acquired Assets before the Closing Date (apportioned in accordance with Section X)
- Then, there is a line item indemnity for Excluded Liabilities.

RWI OVERLAY

- No survival of reps.
  - Taxes typically not considered fundamental in RWI transactions.
- True walkaway or not?
  - In a true walkaway, it's important to ensure all pre-closing taxes are an upfront deduction to the purchase price.
  - Sometimes see a line item tax indemnity.

REPRESENTATIONS & WARRANTIES

IN GENERAL

- What is a representation?
  - Statements of fact that are supposed to be true at the time of signing and/or closing.
- What purpose do tax reps/warranties serve?
  - Risk allocation
  - If the agreement has an indemnity for pre-closing taxes (i.e., a bright-line indemnity), the tax reps/warranties serve more of a due diligence function.
  - If, however, the agreement has rep and warranty insurance (RWI), the tax representations serve as the contours of the liability covered under the RWI policy.
- Sellers generally prefer to limit the breadth of the tax reps/warranties given that they are the roadmap for post-closing tax-related damages.

QUALIFIERS

- Disclosure Schedules
  - Generally, limits the liability of seller unless "scraped."
  - RWI policies traditionally exclude disclosed matters (in some deals, liability can shift back to seller).
  - Purchasers prefer disclosure schedules to be narrow.
- Knowledge
  - Like disclosure schedules, "to the knowledge of seller" qualifiers limits the liability of seller, unless "scraped".
  - If the blown representation was not to the knowledge of seller, no liability under indemnification provisions for breach of a representation.
- Materiality
  - Can be viewed as not in line with market given that GAAP has a built-in "materiality standard" and taxes reflected on the financial statements are generally prepared in accordance with GAAP.

SPECIFIC CONCEPTS

- Taxes
  - The tax returns have been timely filed.
  - Such tax returns were accurate.
  - The taxes have been paid.
    - Shown as due on the return qualifier?
      - Buyer will certainly resist this as the tax that is shown as due may end up being significantly less than the actual tax liability.
  - Income qualifiers?
    - Seller has a multitude of tax liabilities other than income taxes.
- Absence of Changes
  - Purchaser generally wants assurance that the seller has not changed a tax election, amended any tax return, or taken any other action that would increase any tax liability or reduce any tax asset in the post-closing tax period.

SPECIFIC CONCEPTS

- Claims by Tax Authorities
  - Of particular importance regarding state/local tax matters with sellers that operate across states.
- Tax status of entities
  - S corporation representations given the risk of a “bad” S election by seller or an inadvertent foot fault with respect to the termination rules.
  - Partnership or “disregarded entity” representations to confirm transaction structure (e.g., deemed asset sale treatment).
- Audit and disclosure
  - The purpose of these reps are to inform the purchaser of key tax matters that are underway as of the time of the rep.
  - The seller can limit to “outstanding” or other language that excludes completed audits or actions.
  - This rep could further be limited to “written” or “formal.”

ASSET DEALS

- Purchaser is not assuming seller tax liabilities with respect to the operation of the business or the purchased assets.
- Important rep is for purchased assets to not be subject to tax liens (other than for taxes not yet due and payable or for taxes being contested in good faith through appropriate proceedings and for which adequate reserves have been established (in accordance with GAAP)).
- Transferee liability?
  - Purchaser may want seller to rep to it having paid taxes as opposed to solely with respect to the assets.

RWI OVERLAY

- Tax representations outline the recovery under the policy.
- Sellers generally like RWI because it can be used to limit their liability for breaches of reps/warranties.

COVENANTS

IN GENERAL

- What is a covenant? (Compare to representations and warranties)
  - A promise to act (or not to act) by either the purchaser or seller
- Tax covenants cover important matters, including the parties’ obligations to file tax returns and pay any taxes due, the parties’ responsibilities with respect to tax contests by taxing authorities with respect to pre-closing tax periods, the intended tax treatment of the transaction, and purchase price allocations.
- A breach of a tax covenant generally requires the non-breaching party to seek recovery through the indemnity provisions in the agreement.
- Generally, sellers attempt to limit the tax covenants so as limit the potential exposure to liability.

EQUITY PURCHASE AGREEMENTS

- Tax Returns Filed After the Closing Date
  - Purchasers take responsibility for filing tax returns that begin and end after the closing date.
  - Pre-closing tax returns
    - Tax returns for tax periods that end prior to the closing date but are not due until after the closing date.
    - Allocation of return responsibility tied to economic allocation (i.e. tax indemnity vs. not)
  - Both parties often have an interest in pre-closing tax returns and the delineation of responsibility with respect to preparation and filing of such tax returns.
  - One approach is to have the purchaser prepare the pre-closing tax returns with either (1) seller having the ability to review and comment or (2) seller having consent rights over the final version of such returns that will be filed.
    - What is practical or logistical?

EQUITY PURCHASE AGREEMENTS

- <u>Tax Returns Filed After the Closing Date</u>
  - If seller prepares the returns, should purchaser get a review and comment or consent right?
    - Probably, considering that purchaser is filing the return and is signing the return under penalties of perjury.
  - What about tax refunds for pre-closing taxes?
    - Seller generally asks purchaser to pay refunds for pre-closing taxes as soon as reasonably practical.
    - Although purchasers are not generally averse to such ask, purchasers caveat the affirmative obligation to pay refunds for any amounts that were included in the purchase price adjustment mechanic.

EQUITY PURCHASE AGREEMENTS

- Tax Returns Filed After the Closing Date
  - What about payment of pre-closing taxes?
    - If pre-closing taxes are accrued, they are generally reflected as purchase price reductions through working capital adjustments.
      - Note – it is increasingly more market for purchasers to use accrued taxes as purchase price reductions as "Indebtedness" and not through the traditional working capital mechanism.
    - Sellers should be aware of carving out these payments that have already been taken into account as purchase price adjustments (i.e., no purchaser double dip).
  - Other issues to consider?
    - What are the resolution procedures where the parties disagree on the contents of the return? These provisions generally reference the same procedures as those for disagreements of purchase price calculations/adjustments.
    - What if there is no resolution prior to due date of the applicable tax return?
    - Purchaser entitled to amend pre-closing tax returns?

EQUITY PURCHASE AGREEMENTS

- Straddle Tax Returns
  - What is a straddle period?
    - A tax period that includes but does not end on the closing date.
  - Straddle tax return covenants are intended to apportion taxes between pre- and post-closing periods in order to properly allocate the tax liability.
  - In the case of taxes based on, measured by, or related to income, receipts, sales, use, payroll or withholding, the tax liability allocable to the portion of the straddle period ending on the closing date is determined using a closing of the books.
  - In the case of other taxes, such as real estate taxes, the tax liability is allocated generally on a daily proration.

EQUITY PURCHASE AGREEMENTS

- Tax Contests
  - Adverse outcomes generally result in seller being liable to purchaser under indemnification of pre-closing tax provisions.
  - Who leads the proceedings?
    - Does the non-leading party get participation rights (at it sole expense)?
    - What happens if the leading party fails to notify the non-leading party of the contest?
      - Generally, purchasers will add provisions that the failure to notify does not prejudice purchaser against making a claim for indemnification unless such notice failure adversely affects seller.
  - What about the settlement of claims?
    - Is consent (not to be unreasonably conditioned, withheld, or delayed) of the non-leading party required in order to settle such claims?
  - The mechanics of these provisions should generally mirror the tax return preparation/filing provisions.

EQUITY PURCHASE AGREEMENTS

- Purchase Price Allocations
  - Generally, applies to acquisitions of flow-through entities.
  - For purposes of consistent reporting, it is generally advisable to agree either to the allocation.
    - The parties can agree to an allocation methodology at closing or delineate the obligations with respect to the preparation of an allocation schedule (subject to similar dispute resolution procedures as with tax return covenants).
  - The allocations are prepared generally in accordance with Section 1060 of the Code (and the regulations promulgated thereunder).
    - But consider if additional allocations might be needed under foreign tax law if non-U.S. entities are involved.
  - Importantly, there is generally a covenant that the parties will file all tax returns consistent with such allocation and shall not take a position (in tax returns or proceedings) that is inconsistent with such allocation (unless otherwise required by a final determination under Section 1313 of the Code.

EQUITY PURCHASE AGREEMENTS

- Partnership Tax Audit Rules
  - Does the purchaser generally have control to make the push-out election under Section 6226 for "imputed under payments"?
  - One approach is to include a covenant requiring seller (if they are the partnership representative) to make the push-out election.
- Foreign Subsidiaries
  - If a foreign subsidiary is a controlled foreign corporation, specific covenants may be desired depending on whether purchaser is U.S. or non-U.S.
    - For example, Consider including covenants that (i) prevent purchaser from making any Section 338(g) election and/or (ii) taking any action outside the ordinary course of business that might result in recognition of Subpart F income.
  - Coordination may also be needed with non-U.S. counsel to address foreign tax considerations (e.g., value added tax filings or rebates).
- Restrictions on post-closing actions:
  - Particularly relevant if concerns or unanswered questions were identified in diligence the seller's or the company's prior practices and procedures.
  - Often seller will want to include a list of actions that purchaser is not permitted to take post-closing without consent of the seller, such as entering into voluntary disclosure agreement or amending prior year tax returns.

EQUITY PURCHASE AGREEMENTS

- Transfer Taxes
  - Not generally a technical tax matter but a commercial decision.
  - Middle-of-the-road approach is to split these taxes 50/50 since the purchase of equity interests in the United States should generally not result in material transfer taxes.
    - But see, for example, sale of PA real estate company interests.
  - Who is responsible for the payment of the tax and the filing of the specific return under the applicable jurisdiction's laws.
- Tax Sharing Agreements
  - Generally, arise in the consolidated group context.
  - Target company/seller could be responsible for taxes of the parent (or any other member in the group) pursuant to such tax sharing agreement.
  - If the target/seller is not going to be a member of such consolidated group, it makes sense to terminate these agreements.

ASSET PURCHASE AGREEMENTS

- Proration of Taxes
  - Generally applicable to real estate or property tax for applicable assets purchased.
  - The concept is to affirmatively prorate the real estate or property tax to a pre-closing and post-closing period, whereby the seller is responsible for the portion of taxable year until the closing.
- Bulk Sales
  - A purchaser liability statute that some states still use (e.g., PA, NJ, NY).
  - Purchaser could potentially be liable to the state for unpaid seller tax liabilities.
  - Each state has a different mechanism for obtaining clearance.

QUESTIONS?

BIOGRAPHY

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- Kenneth Wang uses his many years of experience in both private practice and in-house tax departments for Fortune 200 companies to counsel clients on all aspects of U.S. tax law, including mergers and acquisitions, partnerships and joint ventures, fund formation, financing transactions, real estate transactions, business restructurings and reorganizations and international tax.
- Kenneth previously served as Senior Tax Counsel at a global technology company focused on industry, infrastructure, transport and healthcare. In this position, he was responsible for leading U.S. tax planning for all mergers and acquisitions, joint ventures and internal restructurings. He also worked as Tax Counsel for an American multinational energy corporation. Before his role as an in-house lawyer, Kenneth practiced at an international law firm.

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- Morgan focuses her practice on federal and international income tax, specifically on the private equity arena and pass-throughs.
- Morgan advises clients on federal and international income tax and private equity matters. Her practice includes advising on mergers, acquisitions, reorganizations, dispositions, capital markets, and restructurings. Morgan has advised private equity sponsors, as well as their portfolio companies and other strategic clients, on the tax aspects of investments, acquisitions, and divestitures. She is also involved in the formation of private equity and hedge funds.
- Morgan is an adjunct tax professor at Temple University Beasley School of Law, vice chair of the Partnership Committee of the Tax Section of the American Bar Association, an elected member of the Philadelphia Bar Association's Tax Council, and treasurer of the Philadelphia Tax Conference. Additionally, Morgan is a frequent speaker on a variety of transactional tax matters and has lectured at several major conferences and forums, including the American Bar Association Tax Conference, the Tulane Tax Institute, and the Chicago Tax Club.

BIOGRAPHY

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- Prior to joining Morgan Lewis, Andreas was a tax associate for a national law firm, where he practiced federal income and state tax law. Before joining the firm, Andreas was a senior associate in the Mergers & Acquisitions group of the Washington National Tax Services office of PricewaterhouseCoopers, LLP in Washington, D.C. Andreas clerked for The Hon. Kathleen Kerrigan of United States Tax Court. He has an LL.M. in taxation.

THANK YOU

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