**Corporate Tax**

**Spring 2023**

**Problem Set 8: Reorganizations**

1. Very broadly, what are the two ways to combine two corporate businesses?
2. Very, very broadly, if a transaction qualifies as a reorganization, what are the tax consequences to the parties? If it doesn’t?
3. What are some of the underlying policy rationales for the reorganization exception? Compare the majority and dissenting opinions in *Marr* and Reg. §1.368-1(b) (first 2 sentences).
4. Acquirer acquires Target’s assets for Acquirer stock/boot. What Code sections will apply to:
   1. Determine if the transaction qualifies as a reorganization?
   2. Exchange of Target shares for Acquiring shares?
   3. Exchange of Target shares for Acquiring shares and boot?
   4. Basis of Acquiring shares in the hands of Target shareholders?
   5. Recognition of G/L by Target on exchange of its assets for Acquiring stock?
   6. Basis of Target assets in the hands of Acquirer?
   7. Recognition of G/L by Target on distribution of Acquiring stock to T shareholders?
   8. Status of Target’s tax attributes?
5. In addition to the statutory requirements of §368, what are the other requirements for an acquisition to be treated as a reorganization? Reg. §1.368-1(b)
6. *Gregory v. Helvering.*
   1. Did the transactions satisfy the statutory definition of a reorganization?
   2. What were the tax consequences to Mrs. Gregory if the transaction were treated as a reorganization?
   3. What would be the tax results if United Mtg. had instead:
      1. Distributed the shares to her as a dividend, and she subsequently sold them?
      2. Sold the shares and distributed the AT proceeds to Mrs. Gregory?
7. What is the purpose of the continuity of proprietary interest (COI) requirement? Reg. §1.368-1(e)(1)(i).
8. In a reorganization, how low can the equity consideration go and still satisfy COI? Reg. §1.368-1(e)(2)(v), Ex. 1 and Rev. Proc. 77-37, Sec. 3.02
9. A owns all the shares of T and receives P shares in exchange for his T shares. Immediately after the merger closes, A sells all his shares to B for $ pursuant to a binding contract. Is COI satisfied? Reg. §1.368-1(e)(8), Ex. 1.
10. A and B own all the shares of T. T redeems A’s shares for $ (none of the funds come from P), and P acquires all of B’s shares for P shares. Is COI satisfied? Reg. §1.368-1(e)(8), Ex. 9.
11. A owns all the shares of T. T merges into P, and A receives P shares. After the merger, P redeems A’s P shares. Is COI satisfied? Reg. §1.368-1(e)(8), Ex. 4(i).
12. Same as previous question, except S, a P subsidiary, purchases A’s P stock.
13. What is the purpose of the continuity of business enterprise (COBE) requirement? Reg. §1.368-1(d)(1)-(3).
14. T conducts 3 lines of business, each about worth about the same. T sells 2 lines business, and P acquires the remaining business in exchange for P voting stock. Is COBE satisfied? Reg. §1.368-1(d)(5), Ex. 1.
15. T invests (1/3 each) in growth stocks, dividend stocks, and corporate bonds (1/3 each). T sells all its stock and bond investments and purchases municipal bonds. P acquires T’s assets in exchange for P voting stock. Is COBE satisfied? Rev. Rul. 87-76 and Reg. §1.368-1(d)(5), Ex. 3.
16. P acquires T’s diversified agricultural business in exchange for P voting stock. P transfers various parts of the business to separate subsidiaries, but no one subsidiary uses a significant portion of the T’s assets. Is COBE satisfied? Reg. §1.368-1(d)(5), Ex. 6.
17. Same as previous question, except that P transfers all the business to S1, a subsidiary, which in turn, transfers it to a partnership in exchange for a 20% interest in the partnership. S1 performs management functions, including making significant business decisions. Is COBE satisfied? Reg. §1.368-1(d)(5), Ex. 8.
18. What is an “A” reorganization? §368(a)(1)(A); Reg. §1.368-2(b)(1)(ii).
19. Under Texas state law, T can merge into P with T shareholders receiving P voting stock and T surviving and continuing to hold a portion of its assets. T shareholders retain their T stock and P stock. Is this a good A reorg? Rev. Rul. 2000-5; Reg. §1.368-2(b)(1)(iii), Ex. 1.
20. Under Del. Law, T merges into DRE, an LLC treated as a DRE owned by X Corp. T shareholders receive X voting stock. All of T’s assets become the assets of DRE and T’s legal existence ceases. Is this a good A reorg? Reg. §1.368-2(b)(1)(iii), Ex. 2.
21. Under Del. Law, DRE, an LLC treated as a DRE owned by X Corp, merges into T, and T shareholders receive X voting stock. All of DRE’s assets become the assets of T and DRE’s legal existence ceases. Is this a good A reorg? Reg. §1.368-2(b)(1)(iii), Ex. 6.
22. T merges into P pursuant to Spanish law and T shareholders receive P voting stock. Is this a good A reorg? Reg. §1.368-2(b)(1)(iii), Ex. 13.
23. T merges into P pursuant to Delaware law, and T shareholders receive P voting stock. P drops down ½ of T’s assets into S1, a wholly owned subsidiary. Is this a good A reorg? Reg. §1.368-2(k)(1), 1(ii), -2(k)(2), Ex. 1. Would it make a difference if P dropped down 100% of T’s assets?
24. T merges into S1, a wholly owned subsidiary of P pursuant to Delaware law, and T shareholders receive P voting stock. S1 distributes ½ of T’s assets to P. Is this a good A reorg? Reg. §1.368-2(k)(1), 1(ii), -2(k)(2), Ex. 2. Would it make a difference if S1 distributed 100% of T’s assets?
25. T merges into P pursuant to DGCL. 50% of T shareholders want to receive $ and 50% want to receive P stock. Is that permissible under §368(a)(1)(A)? Rev. Proc. 77-37, §3.02.
26. T merges pursuant to DGCL into S, a 100% subsidiary of P, in exchange for P voting stock. Is this good reorganization? What kind of transaction is this called?
27. What are some of the non-tax reasons for structuring a merger as a forward triangular merger instead of a direct merger of T into P?
28. T merges pursuant to DGCL into S, a 100% subsidiary of P, in exchange for the following consideration:
    1. NV P preferred stock
    2. 30-yr P debt
    3. $ paid by P and/or S
    4. Assumption of T liabilities by P and/or S. Rev. Rul. 73-257.
    5. NV common stock or V preferred of S
    6. 20-year S debt or 1-year S note
    7. S debt that is convertible into S stock. Rev. Rul. 79-155.
29. T merges pursuant to DGCL into S, a 100% subsidiary of P, in exchange for P voting stock. Immediately thereafter, S liquidates. Is this a good reorg under §368(a)(2)(D)? Rev. Rul. 72-405.
30. What issue does “substantially all of the properties” raise in §368(a)(2)(D)?
31. What is a “C” reorganization and what are the basic requirements? §§368(a)(1)(C), (a)(2)(B), (a)(2)(C), and (a)(2)(G).
32. For ruling purposes, what is “substantially all”? Rev. Proc. 77-37, §3.01.
33. T has 1,100x of gross assets and 1,000x of liabilities. P wants to acquire T assets for P voting common stock in a C reorg. Which of the following proposed structures raise an issue:
    1. T transfers 100x assets to P for P VS, and T uses its remaining 1,000x of assets to pay off creditors. Rev. Proc. 77-37, §3.01 and Rev. Rul. 57-518.
    2. T transfers all its assets to P in exchange for 100x of P VS and P’s assumption of liabilities. Read last 2 sentences of Reg. §1.368-2(d)(1).
    3. T pays off its creditors and transfers 100x of its assets to P for P VS. Rev. Rul. 88-48.
    4. T transfers all its assets to P in exchange for 100x of P VS and 1,000x of cash, which T uses to pay off creditors.
    5. T transfers 1,100x assets to P for P VS, and T uses the 1,000x of the P VS to pay off creditors. §§368(a)(2)(G)(i), 361(c)(1) and (3).
    6. T transfers 1,100x assets to P for P VS, and T sells the P stock and uses the cash to pay off creditors.
34. T Corporation has 650x operating assets, 250x investment assets, 100x cash, and liabilities of 350x. Which of the following are good reorgs? GP owns 100% of P, and assume in each case that the “distribution” requirement is met.
    1. P acquires T’s operating assets for P VS of 650x**.** Rev. Rul. 57-518.
    2. P acquires T’s operating assets for P VS of 50x and GP VS of 600x. 1.368-2d1, 5th sentence.
    3. P acquires all of T’s assets for P VS of 600x, P NVS of 50x, and P’s assumption of T’s liabilities.
    4. P acquires all of T’s assets for P VS of 650x and P’s assumption of T’s liabilities.
    5. P acquires all of T’s assets for GP VS of 650x and P’s and GP’s assumption of T’s liabilities.
35. T Corporation has two business, A and B, each worth 1,000x. P wants to acquire Business A but not B. P transfers Business B to a subsidiary and distributes the stock to its shareholders. Immediately thereafter, P acquires Business A for 1,000x of P VS. *See Helvering v. Elkhorn Coal Co.*  on slides.
36. Same as previous Q, except that T spins off Business A via a distribution of the stock of subsidiary and P acquires all the assets of subsidiary (Business A) from subsidiary. Rev. Rul. 2003-79. Skip the discussion of section 355.
37. P owned 79.9% of S, with the other 20.1% owned by unrelated parties. P exchanged 100k of its VS for all the assets of S, and S liquidated. P therefore received back 79.9k of its shares, with the other 20.1k going to unrelated parties.
    1. In essence, what did P exchange for the S assets? Does that violate the “solely for voting stock” requirement? These are roughly the facts of *Bausch & Lomb,* 267 F.2d 75 (2nd Cir. 1959).
    2. How does Reg. §1.368-2(d)(4)(i) change the result?
38. P acquires 90% of T VS in exchange for P VS worth $100MM. T only has VS outstanding. Is this a good “B” reorg?
39. Same as previous Q, except as part of the same transaction, P also acquires 10 T shares in exchange for $500.
40. P owns 100% of S1 and transfers P VS to S1, which S1 uses the P VS to acquire 90% of T VS. T only has VS outstanding.
41. P acquires 30% of T for cash in 2020. 15 years later, it acquires another 60% in a series of exchanges over 6 months of P VS for T voting stock. This is referred to as a creeping (note, not “creeper”) acquisition. Reg. §1.368-2(c).
42. P acquires 90% of T VS in exchange for P VS worth $100MM. T only has VS outstanding. P also acquires for cash all of the T’s outstanding convertible debt for $20MM. Rev. Rul. 69-91.
43. P acquires 90% of T VS in exchange for P VS worth $100MM. T only has VS outstanding. T has some complaining SHs who don’t want P VS. They are paid cash by T. Rev. Rul. 68-285.
44. P owns 100% of S1, and S1 merges into T and T survives. All T SH receive P VS. Is this a good reorg? What kind of transaction is this called? §368(a)(2)(E).
45. P owns 100% of S1 and wishes to acquire all 1,000 shares of T stock, but 30% of the SHs don’t want P stock. T redeems 10% of its shares (100) for cash, and S1 merges into T with T SHs receiving consideration consisting of 20% cash (for 180 shares) and 80% P VS (for 720 shares). Does this qualify under §368(a)(2)(E)? Reg. §1.368-2(j)(6), Exs. 2 and 3.
46. Memories of the Delaware two-step from corporations. P wants to acquire T via a stock acquisition. P initiates a tender offer for 51% of the T stock, which if it is successful, will be followed by a merger of S1, a wholly owned subsidiary of P, into T solely for P VS. Does this qualify under §368(a)(2)(E)? Rev. Rul. 2001-26.
47. Individual A owns all of the stock of T corp. T transfers all of its assets to a newly formed P corp in exchange for all of P’s CS. T distributes the P stock to A in liquidation. Is this a good reorg under §368(a)(1)(D)? §354(b)(1)(A) and (B).
48. Corp A owns all of the stock of T and P. T transfers all of its assets to P in exchange for 100x, the value of T’s assets. T liquidates and distributes the 100x to A. Is this a good D reorg? What else is deemed to have happened? Reg. §1.368-2(l)(2) and (l)(3), Ex. 1.
49. Which of the following are good “E” reorgs? Reg. §1.368-2(e).
    1. Corp A exchanges its bonds for its CS
    2. Corp A exchanges its preferred stock for its CS
    3. Corp A exchanges its CS for its preferred stock
    4. Corp A exchanges its CS for its bonds. *Bazley v. CIR*, 331 US 737 (1947).
50. Corp A is a NJ corp, and because of the very high NJ taxes, it becomes a Delaware corporation via a re-domiciliation statute. Is this a good “F” reorg?
51. That was pretty easy. Now, A owns 75% of X corp, a NY corp, and B owns 25%. X forms Y, a Del. Corp, and X merges into Y. A receives $, B receives Y shares for his X shares. Is this a good F reorg? Reg. §1.368-2(m)(4), Ex. 2
52. Why corporate tax is hard: read Rev. Rul. 2008-25
53. Target (T) Corp is owned equally by individuals A (100 shares) and B (100 shares). A’s basis in the T stock is $10 and B’s basis is $50. T owns a single asset worth $100, with a basis of $30, and subject to a $10 liability. Pursuant to a valid business purpose, T transfers the asset to Acquiring (Acq) corp in exchange for Acq voting stock ($80), cash ($10), and Acq’s assumption of the liability. As part of the plan, T liquidates and distributes pro rata to A and B (in exchange for their T shares) the Acq stock and cash received from Acq. (Assume that the Acq stock is not nonqualified preferred stock and there is a plan of reorganization.)

For this Q, review E&E, pp. 377-386 or Y&B 451-459

* 1. Determine the tax consequences of this transaction to all parties. Hint, look at slide 34 and work your way through the respective parties. It’s probably best to start with Acq, then T, and finally T shareholders.
  2. Same as (a), but Acq is now wholly owned by Parent (P), and Acq exchanges P stock for the assets and Acq still assumes the liability. As part of the reorg, P transfers its stock to Acq, which transfers the P stock to T plus cash ($10) provided by Acq, and Acq assumes the liability.
     + 1. See Reg. 1.1032-2(b), (d) (ex. 1) for the treatment of the P stock.
       2. See Reg. 1.358-6(a), (b), (c)(1) and (3), and (d)(1), (2), and (3), ex. (a) and (b) for the treatment of P’s basis in Acq stock.
  3. Same as (a), except that the T shares owned by A and B are all owned by a single shareholder, C, in two blocks of equal value. C has a $50 basis in one block and a $10 basis in the other. To minimize the amount of gain recognized in the transaction, how should C allocate the consideration received in exchange for C’s shares in T? See Reg. 1.356-1(b) and (d) (ex. 4); and 1.358-2(a)(2)(i) and (ii).