**Spin Offs**

**Corporate Tax, Spring 2021**

**Problem Set 9**

**Consequences to Distributees (SHs)**

1. What are the 3 ways to divide a corporation?
   1. **Spin off**
   2. **Split off**
   3. **Split up**
2. What section would govern each corporate division in Q1 if §355 didn’t apply?
   1. **Dividend: 301; 311b**
   2. **Redemption: 302;311(b)**
   3. **Liquidation: 331; 336**
3. What are the 4 basic requirements for a tax-free distribution of stock or securities under §355(a)?
   1. **Distribution of stock/sec controls immediately before the distribution**
   2. **Not used principally as a device**
   3. **Active business test**
   4. **All stk/securities (or control) of controlled distributed**
4. Distributing owns 100% of the stock of Controlled, and Distributing distributes pro rata 100% of Controlled to its shareholders. Y Corp acquires 100% of the stock of Controlled in a tax-free reorg in exchange for 25% of Y Corp’s stock. Assume that under common law principles, e.g., *Court Holding*, the transaction is treated as an acquisition of Distributing’s stock in Controlled for 25% of Y stock, and then a pro rata distribution of the Y stock. Rev. Rul. 98-27. Also, skim very lightly §355(e)(1) and (2), which we’ll return turn later.
   1. **ST doctrine turned off for post spin acquisitions/restructuring in determining whether control distributed**
5. Very generally, what’s the device requirement aimed at? Reg. §1.355-2(d)(1).
   1. **Using spin off to distribute E&Ps instead of a dividend**
   2. **Convert one company into two to be able to sell second company**
6. Which of these factors are device or non-device factors? Reg. §1.355-2(d)(2), (3) and (5). **[d2 (device), d3 (nondevice), and d5 (ordinarily nonconsidered to be device)**
   1. Distributing is publicly traded **Nondevice; Why? Business/corp**
   2. The distribution would qualify under §302(a) if 355 didn’t apply **Nondevice**
   3. Sale of distributing negotiated before **(substantial evidence)** or after **(evidence)** the distribution
   4. Pro rata distribution **device**
   5. Absence of E&Ps of controlled and distributing **ordinarily nondevice**
   6. Distribution to corporate shareholder **nondevice**
   7. Business of either controlled or distributing is secondary business. **(device if it can be sold w/out adversely affecting business of other corp)**
   8. Corporate business purpose (**nondevice)**
7. Distributing (D) owns 100% of controlled (C), and both satisfy the active business requirement. To resolve managerial disputes between different groups of shareholders, D wants to completely redeem the dissenting SHs with shares of C. To equalize the value of the C stock and the value of the dissenting SHs’ stock of D, D first makes a capital contribution to C of 13x (about 100% of the value of C before the contribution).
   1. What kind of division is this? **Split off**
   2. Does this present device concerns? Rev. Rul. 64-102 and Reg. §1.355-2(d)(5)(iv)
      1. **Possibly b/c transferring asset not used in T/B (d2ivB)**
   3. What concerns does the capital contribution present? **Possibly b/c transferring asset not used in T/B (d2ivB)**
8. Distributing (D) has 3 SHs, A, B, and C, and D owns 100% of controlled 1 (C1), controlled 2 (C2), and controlled 3 (C3). All of them satisfy the active business requirement. D distributes both C2 and C3 to SHs A & B in complete redemption of their stock. Does this transaction present device concerns? Why or why not? Reg. §1.355-2(d)(5)(v), Ex. 2.
   1. **Bad b/c more than one company; can sell one company and retain the other**
9. Distributing (D) manufactures pharma products and owns investment securities. D contributes the investment securities to new controlled (C), and distributes the stock of C. Is the AT/B requirement satisfied? Reg. §1.355-3(b)(2)(iv)(A) and (c), Ex. 1
   1. **AT/B doesn’t include holding stk etc for investment purposes**
10. Distributing (D) is engaged in the sale of consumer cleaning products and also does related R&D. D contributes the R&D department to controlled (C) and distributes controlled. C will continue its R&D activities for both D and unrelated 3rd parties. Is the AT/B requirement satisfied? **{TBD}** and (c), Ex. 9
    1. **Horizontal—D & C perform distinct functions**
11. Distributing (D) is engaged in the sale of shoes in physical retail spaces. D creates an “Internet web site” to sells its shoes. Two years later, it transfers the web site’s assets and controlled (C) and spins off controlled. Does C satisfy the AT/B requirement? Rev. Rul. 2003-38?
    1. **Expansion of old business—even acquisition/creation of business in same line of busines**
12. Read Rev. Rul. 2019-09. How is the IRS considering expanding the types of activities that will satisfy the AT/B test?
    1. **Suspend Old RRs require revenue (income producing); regs: purpose of earning income or profit (-3b2ii)**
13. Very generally, what are the hot dog stand proposed regs aimed at? Google could be your friend.
    1. **Small T/B compared overall business, i.e., hot dog stand.**
14. D has two business, B1 and B2. D’s IB informs D that if the two businesses were conducted in separate and independent corporations, the aggregate value of the stock of the resulting corporations would likely be greater than the value of D’s stock without a separation. That is, 1 + 1 = 3. Ha! Any increase in aggregate stock value would benefit D because it would enhance the value of its equity-based incentive compensation to employees and preserve capital in subsequent corporate acquisitions using D stock as consideration. Accordingly, D transfers Business 2 to newly formed C Corporation and distributes pro rata the C stock among D’s shareholders. Does this transaction satisfy the business purpose requirement? Rev. Rul. 2004-23.
    1. **SH purpose v Corporate purpose; SH is coextensive w/ Corp purpose therefore good corporate purpose**
15. A has a basis of 40x in her shares of D, which distributes all of the shares of controlled (C) to A in a good 355 spin. The FMV of the C shares is 25x and the D shares post spin is 75x.
    1. How much G/L does A recognize? §355(a)
       1. **None b/c good spin**
    2. What’s A’s basis in her D and C shares post spin? §358(b)(2); Reg. §1.358-2(a)(2)(iv).
       1. **Basis in D split based on FMV (10 and 30)**
16. A has a basis of 50x in her shares of D, which distributes 5x in cash and all of the shares of controlled (C) worth 45x to A in a good spin off.
    1. What is the $5x called? **Boot**
    2. How is it taxed? §356(b) **5 is taxed as a dividend**
17. A owns 40% of D stock worth $400x. D distributes all of the shares of C (worth $200x) to D **plus** 200x of cash in exchange for A’s D shares in a good 355 transaction.
    1. What kind of division is this? **Split off**
    2. What is the $200x of cash called? **Boot**
    3. What is the character of the $200x of cash? §356(a)(2) and Rev. Rul. 93-62.