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When you have to be right

Commentary

Top Ten Corporate Actions of 2016 and Key Tax Issues

Financial Services

Capital Changes 2016 Top Ten

Authors

John Kareken

Tax & Regulatory Manager, Investment Compliance Solutions

Wolters Kluwer

Cynthia Lapins

International Editor, Capital Changes

Wolters Kluwer

Robert Schwaba

Tax & Regulatory Analyst, Investment Compliance Solutions

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1. & 2. Johnson Controls-Tyco merger/Adient spinoff (U.S., Ireland, U.K.)

Inversion merger followed by taxable spinoff by foreign acquiring company. Inversion merger treated, in part, as taxable exchange subject to Sec. 304 and, in part, as redemption to extent consideration deemed provided by Johnson Controls Inc.

3. Broadcom-Avago merger and scheme of arrangement (U.S. and Singapore)

Cash and stock (or partnership unit) merger with multiple available elections: (a) stock only election nontaxable; (b) cash and stock election treated as partial redemption with no loss recognized; (c) election to receive units nontaxable to extent of value of exchangeable units but taxable to extent of value of voting rights.

4. SABMiller plc/Anheuser-Busch (U.K., Belgium)

Multi-step acquisition of SABMiller with cash or partial share consideration election. Complex proration of partial share (cash/stock) alternative; cash portion taxable as capital gain or loss, stock portion nontaxable.

5. Time Warner Cable/Charter Communications (U.S.)

Initial merger for cash and stock treated as partial redemption to extent of cash, with percentage considered redeemed for cash varying according to merger election chosen by holder, while second and third mergers treated as nontaxable Sec. 368(a) reorganizations.

6. Enersis/Empresa/Chilectra (Chile)

Separation of multiple related entities' Chilean and non-Chilean assets via three spinoffs followed by two mergers and a tender offer; second merger is Sec. 368(a) nontaxable reorganization with cash received in voluntary tender offer treated as boot.

7. EMC Corp. (U.S.)

Merger consideration consists of cash and tracking stock. Original tax information stated that all cash received treated as redemption, later tax information provided that stock and portion of cash treated as exchange with remainder of cash treated as redemption.

8. PartnerRe Ltd./EXOR SpA (Bermuda, Italy)

Taxable stock merger and proposed nontaxable continuation of preferred stock as surviving company preferred. To avoid tax shelter reporting requirements for fast-pay stock, company instead offered voluntary post-merger exchange of preferred with similar terms rather than merger exchange for preferred with enhanced dividend.

9. Starwood Hotels & Resorts/Vistana/Interval Leisure Group/Marriott (U.S.)

Nontaxable distribution by Starwood of Vistana shares followed by two nontaxable mergers, resulting in ultimate basis allocation between Interval Leisure and Marriott shares received. Company postponed closing of transaction in order to revise original FIRPTA position that had stated withholding required on Vistana distribution.

10. Fiat Chrysler/Ferrari/RCS Mediagroup (Netherlands, Italy)

Nontaxable spinoff by Fiat of Ferrari shares to Fiat shareholders and convertible bondholders resulted in basis allocation for both shareholders and bondholders; subsequent taxable distribution by Fiat of RCS Mediagroup shares to Fiat shareholders but not to bondholders resulted in adjustment to bond conversion rate. Additional €0.01 cash payment in otherwise nontaxable Ferrari spinoff caused application of Sec. 356(b) boot rule to spinoff.

For more information about our solutions and organization, please contact our product managers Richard.Ryndak@wolterskluwer.com or Susan.Flignor@wolterskluwer.com.

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