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February 6, 2015

The Honorable Mark Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: **Report on Proposed Regulations Regarding Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities**

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit the attached report (the "Report") on the proposed regulations regarding the allocation of consideration and the allocation and recovery of basis that were published on January 21, 2009 (the "Proposed Regulations").

We believe the Proposed Regulations are in general a significant improvement over existing law. The Report considers the conceptual choices underlying the Proposed Regulations and suggests changes designed to cause certain aspects of the Proposed Regulations to be more consistent with the economics of a transaction and with other aspects of the Proposed Regulations. The Report also suggests certain exceptions, modifications and alternative approaches designed to make the Proposed Regulations easier to administer.

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Our primary recommendations are as follows:

1. Provide for averaged basis within individual shares. We recommend that final regulations clarify that a share of stock of a transferee corporation received in a Section 351 transaction in exchange for assets with differing bases has an averaged basis, rather than a segmented basis. We also recommend that the bases of individual shares be averaged rather than segmented in reorganizations, Section 355 transactions and the other transactions addressed by the Proposed Regulations. Exceptions might apply to the extent necessary to track differing holding periods or to address any other overriding policy considerations.

2. Provide exceptions to the deemed issuance and recapitalization approach. In the interest of administrability, we recommend two exceptions to the deemed issuance and recapitalization approach that the Proposed Regulations would extend to capital contributions. One exception would apply to contributions of property having a de minimis value in relation to the pre-contribution value of the stock in the recipient corporation. The other would apply to contributions of property with respect to which there is no more than a de minimis disparity between basis and fair market value. If either exception applied, the basis of the contributed property generally would be added to, and averaged with, the basis of existing shares. We also recommend the extension of such exceptions to certain other stockless transactions and potentially to certain transactions in which stock is issued.

3. Adopt aggregate basis recovery under Section 301(c)(2) in some situations. We recommend that an aggregate approach to basis recovery under Section 301(c)(2) be adopted in some situations. Under this approach, all basis of a shareholder in all shares with respect to which a distribution is made would be recovered before any gain is recognized. However, we believe that it would be appropriate to adopt the per-share approach (taken in the Proposed Regulations with respect to all Section 301 distributions) for small holders of stock in public companies if it is felt important to facilitate broker reporting. We note, moreover, that such holders could be viewed as raising somewhat different policy considerations. Under this approach, distributions would be treated as made ratably with respect to each share in the class with respect to which the distribution is made and basis would be recovered share by share.

4. Consider alternative frameworks for taxing dividend-equivalent redemptions. We recommend that, in a dividend-equivalent redemption, consideration be given to adopting a “dividend controlling shares” approach or a “bifurcated distribution” approach rather than the “redeemed class” approach adopted by the Proposed Regulations. These three approaches are explored, along with some related concerns and other alternatives, in greater detail in the Report.

5. Consider providing for ratable recovery of losses deferred under Section 302. Where a dividend-equivalent redemption gives rise to a deferred loss as a result of other shares owned by or attributed to the taxpayer, we recommend that consideration be given to providing for such loss to be taken into account ratably as the shares that gave rise to the deferral cease to be owned by or attributed to the taxpayer.

6. Disregard certain shares sold or otherwise disposed of in connection with certain redemptions. If, pursuant to a plan, some shares are redeemed and other shares to which the basis in the redeemed shares would otherwise have shifted are sold, we recommend the adoption of a rule under which the sold shares would be disregarded for purposes of determining the basis consequences of the redemption, with the result that the unrecovered basis in the redeemed

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shares would remain fully reflected in retained shares or, if there were no such retained shares, would result in a deferred loss.

7. Provide for pro rata allocation of consideration within classes in all reorganizations. We recommend that consideration received in exchange for any class of stock or securities surrendered in a reorganization be allocated pro rata to each surrendered share or security of such class, even if the exchange is not dividend equivalent.

8. Consider treating certain dividend-equivalent reorganizations as two-step exchanges. For purposes of determining basis consequences, we recommend that if shares exchanged solely for boot in a dividend-equivalent reorganization are treated as outside the scope of Section 356, then consideration be given to treating a reorganization as a two-step transaction in which (i) each class of shares surrendered solely for boot in the exchange is exchanged for a class of stock of the acquiring corporation having the same characteristics as the surrendered class, and (ii) the deemed-issued shares are then redeemed by the acquiring corporation for the consideration actually received by the surrendering shareholder. We also recommend that if the foregoing two-step construct is not adopted, further guidance be provided regarding the basis and loss consequences resulting from treating shares for which solely boot is received in a dividend-equivalent reorganization as being governed by Section 302(d). Lastly, we recommend that guidance be provided as to which corporation's earnings and profits are relevant for purposes of determining dividend, basis recovery and gain consequences in a reorganization with respect to shares governed by Section 302(d).

9. Treat dividend-equivalent Section 304 transactions as involving an issuance and redemption of common shares by the acquiring corporation. On balance, we agree with the approach taken in the Proposed Regulations of treating a dividend-equivalent Section 304 transaction as involving an issuance and redemption of common shares by the acquiring corporation. However, this choice of common shares has implications for choices made in the dividend-equivalent redemption and dividend-equivalent reorganization contexts, which are discussed in greater detail in the Report.

We appreciate your consideration of our recommendations.

Respectfully submitted,



David H. Schnabel
Chair

Attachment

cc: Alison Burns

Mr. Mazur
Mr. Koskinen
Mr. Wilkins
February 6, 2015

Deputy Associate Chief Counsel (Corporate)
Internal Revenue Service

Erik Corwin
Deputy Chief Counsel (Technical)
Internal Revenue Service

Andrew J. Keyso, Jr.
Associate Chief Counsel (Income Tax & Accounting)
Internal Revenue Service

Emily McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Krishna Vallabhaneni
Attorney Advisor
Department of the Treasury

Thomas C. West, Jr.
Tax Legislative Counsel
Department of the Treasury