

January 16, 2001

The Honorable Stuart L. Brown
Chief Counsel
Room 3026
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Eric Solomon, Esq.
Deputy Assistant Secretary (Tax Policy)
Treasury Department
Room 1330, Main Treasury
Washington, D.C. 20220

Re: **Business Plan for 2001**

Dear Stuart and Eric:

I am writing in response to Notice 2000-63, in which the Internal Revenue Service and the Treasury Department solicited suggestions for items to be included in their Guidance Priority List for 2001. The officers of the Tax Section have received a number of suggestions from individual members for transmittal to the Service and Treasury. These suggestions, which have not been considered or approved by the Section's Executive Committee, are listed below. Also included in the following list are some suggestions drawn from Tax Section reports submitted over the past year.

Corporate Transactions

1. Revise regulations (Treas. Reg. § 1.368-2(b)(1)) defining a "statutory merger or consolidation" in section 368(a)(1)(A) so that they encompass certain mergers and consolidations effected wholly under foreign corporate law.¹
2. Issue guidance as to whether, under current regulations, a "statutory merger or consolidation" as defined in Section 368(a)(1)(A) encompasses a merger between a U.S. corporation and a foreign corporation, notwithstanding that it is pursuant to foreign as well as U.S. law.
3. Issue guidance as to the "substantially all" requirement, particularly with respect to the consequences of a post-acquisition distribution of assets to a parent or to other subsidiaries of the parent.
4. Clarify the proper characterization of certain two-step transactions, for example, transactions structured as a section 368(a)(2)(E) reverse subsidiary merger followed by an upstream merger, and transactions structured as a tender offer or exchange offer (which may or may not qualify as a "qualified stock purchase") followed by a reverse subsidiary merger. Guidance might clarify application of *King Enterprises*, Rev. Rul. 90-95, *Yoc Heating* and Rev. Rul. 67-274.
5. Clarify Treas. Reg. § 1.368-2(k) and the application of the continuity of business enterprise regulations.
6. Issue guidance as to the tax consequences of assumption of contingent liabilities, particularly employee-related liabilities for

¹ This item and the next item were on the list of suggestions for the 2000 business plan that we forwarded to you by letter dated February 14, 2000. On April 6, 2000, the Tax Section submitted a report on these subjects.

pensions and other post-employment benefits, in taxable transactions.

7. Amplify Rev. Rul. 99-23 concerning the deduction of investigatory costs, especially as to when the "whether or which" test is satisfied in a typical acquisition transaction, and as to application of the tests to the target corporation.

Financial Products

1. Issue regulations on timing and character of income from notional principal contracts that provide for contingent payments.²
2. Issue regulations on "deep-in-the-money" options and prepaid forwards.
3. Issue regulations on application of wash-sale rules to derivatives.
4. Issue regulations on treatment of unbalanced straddles ("one side larger than the other") under section 1092.³
5. Issue regulations or other guidance on section 263(g).
6. Revise proposed FASIT regulations (Treas. Reg. §§ 1.860H-0 through 1.860L-4) to reflect public comments.⁴

International

1. Finalize Prop. Treas. Reg. § 1.1296-4 (providing exceptions to PFIC rules for banks and securities dealers).

² The Tax Section submitted a report on this subject on May 22, 1998.

³ The Tax Section submitted a report on both this subject and the subject of the following item on March 17, 2000.

⁴ A Tax Section report dated May 5, 2000 set forth our comments.

2. Issue additional regulations on PFIC definition to ensure that active businesses are not treated as PFICs.
3. Consider relief to holders of stock options issued by PFICs to address consequences of current inability to make QEF elections.
4. Finalize global dealing regulations.
5. Issue additional guidance on interest allocation under sections 861 and 882 to address open issues, including the relationship between rules in regulations under those sections and the global dealing regulations, the treatment of derivatives for purposes of those rules and the direct tracing of interest expense in appropriate circumstances.

Partnerships

1. Issue guidance on treatment of options and convertible debt and equity interests in partnerships (as to which comments were requested in Notice 2000-29).

Other

1. Amplify Rev. Rul. 2000-7 as it relates to removal costs. It does not apply to removal of a component of a depreciable asset, the costs of which are either deductible or capitalized based on whether the replacement of the component constitutes a repair or improvement. Consider amplification as to what constitutes a "depreciable asset" in this context and as to change of method of accounting implications.
2. Consider revisions to regulations under section 83.⁵

⁵ Possible revisions were discussed in a report of the Tax Section dated December 7, 2000.

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3. Revise proposed and temporary tax shelter regulations to reflect public comments.⁶

Please call Bob Jacobs or me if the Tax Section can be of assistance to you in your consideration of any of the foregoing suggestions.

Sincerely,

Robert H. Scarborough

copies to:

The Honorable Charles O. Rossotti

The Honorable Jonathan Talisman

Joseph M. Mikrut, Esq.

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⁶ The Tax Section set forth its comments in a report submitted dated November 16, 2000.