Tax Accounting in Mergers and Acquisitions

Glenn R. Carrington

2013 Edition

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Dedication

This book is dedicated to Gladys Marie Brown Carrington, my devoted mother, who passed in March of 2005. She instilled in me a "can do" attitude for which I am so grateful. She always told me that "if someone else did, you surely can too" and "what others have should never make you jealous, but rather challenge you." As a result of her guidance, I have always approached life as though the glass is half full and have undertaken seemingly insurmountable challenges, including writing this book.

I want to thank my family—my sons, my father, my sister and brothers, my aunts, uncles and cousins and my line brothers—for their support and devotion over the years. Your love, affection and belief have been an invaluable source of strength to me. I also want to thank my friends, colleagues and mentors. The experience and knowledge I gained from each one of you is reflected through out this book.

Preface

All deals raise issues involving tax accounting. The tax accounting issues presented in these deals are often numerous and complex and often put a significant amount of money at stake. These issues, however, are frequently overlooked or only are cursorily considered. One reason for this is that there is very little guidance available on tax accounting issues in the context of mergers and acquisitions. This treatise is intended to provide guidance on tax accounting issues from a transactional perspective.

As noted, the tax accounting issues that arise in mergers and acquisitions are numerous and varied. In this edition of this treatise, we have attempted to cover some of the more significant tax accounting issues that arise in deals. In subsequent editions, we hope to address additional issues, such as the installment sale rules, cancellation of indebtedness issues, debt versus equity issues, and financial accounting implications of various transactions.

Glenn R. Carrington

September 2012

Acknowledgments

The subject matter of tax accounting issues in mergers and acquisitions is expansive and involves issues from a number of diverse and complex areas of tax law. In writing this treatise, I was fortunate to have substantial contributions from my colleagues who have added their considerable expertise. This treatise had genesis in an outline prepared by myself and Mark Schneider over 15 years ago and this original outline has served as the basis for this treatise. Over the years this outline has been expanded and revised, with considerable input from Amy Sargent. Her tremendous contribution continues to be reflected in the treatise.

I wish to express my gratitude for the invaluable contributions of several of my colleagues at Ernst and Young. Through the efforts of these contributing authors, the outline has evolved into the first treatise focused on tax accounting issues in mergers and acquisitions. Amy Sargent not only assisted me with the outline, but made substantial contributions to most of the chapters—especially, those dealing with capitalization and contingent liabilities and consequences from the discharge of indebtedness. Kim Golightly was a primary author of the chapter addressing the treatment of intangibles under section 197. Jane Rohrs was a primary author of the chapter dealing with accounting for transactions under sections 351, 338, 381, 721 and 1001, which was substantially revised by Scott Garrison and Chris Netram to reflect the final section 381 regulations. Brian Peabody was the principal author of the chapter dealing with corporate equity reduction transactions, a highly complex area, and made substantial contributions to the chapter addressing consolidated return issues. In addition, Andrea Mouw contributed greatly by reviewing many sections of the book dealing with tax accounting issues.

Many others have contributed to the preparation of this treatise, through research, editing and reviewing. Their efforts contributed greatly to the quality of this treatise. I want to thank Pat Anderson for her assistance with the original chapter dealing with accounting for transactions under sections 351, 338, 381, 721 and 1002. I am grateful to Richard Larkins and Tom Coony for their review of the chapters dealing with debt modifications and original issue discount and to Marc Countryman's review of the chapter dealing with the consequences of discharge of indebtedness. I would also like to acknowledge Colleen O'Connor's review of many sections dealing with tax accounting issues in past editions of the book. I would also like to thank Lynn Edelstein, who assisted in drafting the section 197 chapter and Jeff Erickson and Robert Honigman, who provided invaluable input on partnership issues arising under section 197. Barry Tovig and Brandon Carlton's expertise on issues relating to LIFO are reflected in many chapters of the book. Matthew S. Blum's review of the sections dealing with section 163(j) contributed greatly to the quality of this book. Special thanks to Karen Messner for her assistance in proofreading many chapters of this book.

Finally, I would like to thank CCH and my editors, Susan Frayman and Anita Rosepka. Their hard work and encouragement have made this book possible.

About the Author

Glenn R. Carrington is the National Tax Director for Client Services at Ernst & Young LLP, where he serves on the U.S. Executive Board. As National Tax Director for Client Services, Glenn primarily focuses on serving clients in the areas of corporate, tax accounting, and financial transactions. Additionally, he spends time developing and implementing strategy for the E&Y tax practice with an emphasis on key accounts for the firm. He has a strong background in high-profile issues such as capitalization, intangibles, bankruptcies, corporation reorganizations, contingent liabilities, and environmental remediation.

Glenn has had an illustrious career for over 20 years, both in private practice and the government. Over half of his career has been spent as a partner with major accounting firms. He was with Arthur Andersen for eight years where he served as Managing Director of their Office of Federal Tax Services ("OFTS") and head of OFTS' Domestic Tax Practice Group.

He served at the IRS as Assistant Chief Counsel (Income Tax & Accounting) from July 1990 to April 1994; as a Branch Chief in the Office of the Assistant Chief Counsel (Corporate) from October 1988 to July 1990; and as Counsel to the Director of Corporation Tax Division from December 1987 to October 1988. Prior to joining the IRS, Glenn was in private practice at Caplin & Drysdale, Chartered. He began his legal career in 1980 as an Attorney-Advisor in the Treasury Department's Honors Program, where he rotated through the Tax Legislative Counsel's Office and the Office of International Affairs at Treasury, as well as the former Interpretative Division in the Office of Chief Counsel at the IRS.

Glenn is a member of the ABA Taxation Section. He has also served as Chair of the ABA's Government Relations Committee, as well as an adjunct professor in the Graduate Tax Program at Georgetown University Law Center. Glenn earned his law degree from the University of Virginia School of Law in 1980. He is also a frequent lecturer speaking at the following major tax forums: PLI's Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations; PLI's Tenth Annual Real Estate Tax Forum; Penn State/New York Bar Institute—Fifth Annual Tax Aspects of Mergers and Acquisitions; NYU Tax Institute on Federal Taxation; TEI's Tax Forums and University of Virginia's 60th Annual Virginia Conference on Federal Taxation. He is a frequent speaker at the Practicing Law Institute, the UCLA Tax Institute (formerly the Miami Tax Institute), and other conferences. Glenn is listed in the Corporate Tax section of the *International Who's Who of Business Lawyers.*

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