these consolidated return rules were expanded to provide broader relief beyond just the consolidated return context. [See Reg. §1.1032-3(b).]

**NYSBA Recommendations**

Even though Congress and the IRS have provided limited relief to alleviate the zero-basis problem, it appears that the IRS may be ready to undertake a more thorough revamping of this area. Indeed, Rev. Rul. 2006-2 states that the zero-basis issue is under study. To assist the IRS in its study, the NYSBA has produced a zero-basis report which includes numerous recommendations. Below is a highlight of these recommendations:

1. Stock of a corporate shareholder contributed to a corporation should have a fair market value basis in the hands of the transferee (and not a zero-basis), and the basis of the shares received in exchange should also have a fair market value basis (and not a zero-basis).

2. A set of basis adjustment rules should be provided so that a sale of parent stock by a subsidiary does not give rise to a taxable gain or a deductible loss, and so that changes in the value of parent shares held by the subsidiary are not taken into account in determining gain or loss on a sale of subsidiary stock by the parent.

3. These basis adjustment rules should apply in full where the subsidiary is at least 80 percent owned by the parent, and otherwise should apply on a proportionate basis. Below some lower threshold (between 20 percent and 50 percent), the basis adjustment rules should not apply at all.

4. Stock of a corporate shareholder contributed to a partnership should have a fair market value basis in the hands of the transferee (and not a zero-basis), and the basis of the partnership interest received in exchange should also have a fair market value basis (and not a zero-basis).

5. Code Sec. 1032 should be extended so that changes in value of a partner’s stock held by the partnership are not taken into account in determining gain or loss from a sale of the partner’s partnership interest.

6. The rules proposed above for a fair market value basis, and for subsequent basis adjustments, should apply regardless of whether the entities involved are domestic or foreign.

Besides these six recommendations concerning stock transfers, there are analogous proposals for transfers of debt. All in all, the NYSBA report contains an excellent summary of the history of the zero-basis problem, including many examples of how it has wreaked havoc on taxpayers over the years. The NYSBA report should be required reading for anyone who wants to fully understand the history of the zero-basis problem, the patchwork of fixes made over the years, and the traps for the unwary created by this patchwork of fixes. Unfortunately, though, notwithstanding the reach and nearly universal acceptance of the NYSBA as an influential bellwether, these zero-basis fixes are at this point just proposed.


Reviewed by Patrick Hoehne • Wood & Porter • San Francisco

For me, reading Professor Sam Thompson’s corporate taxation book, CORPORATE TAXATION THROUGH THE LENS OF Mergers & Acquisitions, including Cross Border Transactions, brought back law school memories. I’d sit in Thompson’s class at UCLA waiting for him to enthusiastically shout out “Mr. Hoehne, what did the court hold? Why? What are the implications?” Thompson’s enthusiasm and passion filled his classroom. So, too, with his latest book. Thompson has written a comprehensive yet easy-to-follow book revolving around taxable and tax-free mergers and acquisitions. While the book was written with the law student in mind, neophyte and seasoned tax practitioners alike will likely rely on his work to understand the intricacies of M&A from a federal and international tax perspective.

The book is divided into four parts. Part I provides an overview of basic corporate tax principles and an introduction to taxable and
Thompson’s book is not coffee-table book reading. Rather, I found myself armed with a pen and paper, and continually jotting down the various tax structures. So, if you keep this book at your bedside, keep a pad and pen handy too. While not light reading, the format of the book allows readers to ease gradually into the complexity of M&A.

Thompson starts with a high-level overview of the basic concepts of corporate taxation, such as gain recognition and tax basis issues. Then, he delves deep into the intricacies of taxable and tax-free mergers and acquisitions, including the consolidated return regulations. He uses diagrams throughout the book to illustrate various reorganizations. I found the diagrams particularly helpful in understanding cross-border acquisitive reorganizations.

Thompson uses case law that has been succinctly edited to illustrate various corporate tax concepts. In fact, most of the cases in the book are divided into easy-to-follow categories, including background, facts, analysis (issues) and a conclusion. Following many of the cases, and sprinkled elsewhere throughout the book, Thompson has posited questions to the reader to further hone the students’ understanding of the federal taxation concepts prevailing in the M&A milieu. (I searched in vain for an answer key to the questions, and later discovered that a teacher’s manual is available online.)

To provide further insight into the history of the Treasury Regulations and the Internal Revenue Code involving M&A transactions, Thompson has included legislative history. That historical perspective shows the vicissitudes of our system and the many shifts in federal tax policy. Thompson concludes the book with a critique of President Bush’s plan to eliminate the tax on dividends.

I highly recommend Thompson’s CORPORATE TAXATION THROUGH THE LENS OF MERGERS & ACQUISITIONS to any M&A tax professional. Thompson has done a superb job of translating the often incomprehensible tax code into language that a student or beginning tax professional can understand. It is available from Carolina Academic Press for $110.00 (www.cap-press.com).