

## New *Fort Howard* Opinion

by Robert W. Wood • San Francisco

The October 1996 issue of *The M&A Tax Report* includes an article by Mark Muntean, "LBO Loan Fees: Still Deductible After All These Years," Vol. 5, No. 3, *M&A Tax Report* (October 1996), p. 1. Muntean notes the history of controversy concerning the deductibility of LBO fees, and the remarkably favorable "technical correction" contained in the Small Business Job Protection Act of 1996. With an effective date retroactive to 1986, that makes such fees deductible after all.

Now, the Tax Court has issued a supplemental opinion in its *Fort Howard Corp.* case. See *Fort Howard Corp., et al. v. Commissioner*, 107 T.C. No. 12 (Oct. 22, 1996). The new opinion takes into consideration the amendment to Section 162(k) made by the Small Business Job Protection Act of 1996. ■

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Under the terms of such an agreement, the shareholder exchange would become retroactively taxable (in whole or in part) if, during the five-year term of the agreement, BT was to dispose of MCI stock, or if MCI disposed of all or a substantial portion of its assets. See Reg. §1.367(a)-3T.

**Good Deal on Goodwill**

Of course, the most significant aspect of this transaction for domestic practitioners in the M&A field is the U.K. convention with respect to goodwill. Unlike a U.S. buyer of MCI, BT will be permitted to charge the goodwill directly to shareholder's equity, and will not have to amortize this intangible against earnings. As helpful as Section 197 of the Internal Revenue Code may have become when it was enacted a few years back, it certainly cannot compete with the British system. ■

**And a Few More Spins...**

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At the risk of pandering to spin freaks, we feel obligated to mention a number of recent spin developments, even if only cryptically. They include Bank of America, set to spin off a portion of its credit card processing business. See "BofA to Spin Off Stake in Card Unit," *San Francisco Chronicle*, Oct. 12, 1996, p. D7. Westinghouse Electric Corp. has also entered the fray, opting for a clear division of two business groups, with a spinoff of its \$5 billion a year industrial operations into a new public company. See "Westinghouse to Spin Off Industrial Operations," *Wall Street Journal*, Nov. 12, 1996, p. A3. See also "For Old Westinghouse, Spinoff is Life-or-Death Test," *Wall Street Journal*, Nov. 13, 1996, p. B4.

More and more of these transactions seem to be happening, particularly coupled with initial public offerings. Other examples include Triarc, which now plans to spin off its beverage and fast food businesses. See "Triarc's Beverage, Fast-Food Business Set to be Spun Off," *Wall Street Journal*, Oct. 30, 1996, p. A10. Most of the announcements of such plans stress bolstering and enhancing shareholder value. A good example is the planned spin by Value Health, Inc. of its pharmacy-benefit management business. See "Value Health, in Broad

Restructuring, to Spin Off its Pharmacy-Benefit Line," *Wall Street Journal*, Oct. 10, 1996, p. B7.

New technology in the high tech field may increasingly turn to spins, too. Recently, Interval Research Corp. (founded by Paul Allen of Microsoft fame) has announced it will spin off three different companies, each with high tech inventions that are to be separately exploited. See "Interval Research Will Spin Off 3 Firms to Parlay Inventions," *Wall Street Journal*, Nov. 13, 1996, p. A3. Not all of the spins being announced involve public offerings. See "Fox Will Spin Off Children's Network, Merge it Into New Company with Saban," *Wall Street Journal*, Sept. 23, 1996, p. B7. See also "State in Zimmerman Sign to be Spun Off to Holders," *Wall Street Journal*, Nov. 15, 1996, p. B4.

But after all the hoopla about shareholder value, sometimes it doesn't turn out to be true. Take Hanson, for example. Recent articles suggest that everything has not gone as well as had been expected. See "Hanson Spinoff Plans Haven't Raised Shareholder Value," *Wall Street Journal*, Sept. 26, 1996, p. B4. But the trend still favors the "value enhancement" argument. See "Baxter Official Sees 10% Sales Growth Following Spinoff," *Wall Street Journal*, Oct. 25, 1996, p. B10. ■

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