Rulings Address Dividend Treatment of Boot in Reorgs.

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Revenue Ruling 93-62 concludes that gain recognized on the receipt of cash in an exchange of stock that otherwise qualifies under Section 355 is not a dividend under Section 356(a)(2). In the ruling, the distributing corporation ("Distributing") had 1,000 shares of stock outstanding, with each share worth $100. Distributing owned all of the stock of another corporation ("Controlled"), with a value of $20,000. In a Section 355 distribution of Controlled's stock, $20,000 in cash was also distributed.

The question in the ruling was the appropriate treatment of the cash. The ruling concludes that the issue of whether the payment of boot is treated as a dividend is determined before the exchange. Consequently, one looks to the number of shares before and after the exchange. Based on the numbers in the ruling, the Service concluded that the cash distribution (a deemed redemption) should be treated as an exchange because it qualified as substantially disproportionate under Section 302(b)(2).

The ruling indicates that its purpose is to reflect the Supreme Court's decision in *Clark*, 489 US 726 (1989).

Boot as a Dividend

Revenue Ruling 93-61 addresses the related question of boot determination in an acquisitive reorganization. That ruling, also designed to reflect the Supreme Court's *Clark* decision, concludes that the determination of whether boot is treated as a dividend distribution under Section 356(a)(2) is made by comparing the interest the shareholder actually received in the acquiring corporation with the interest the shareholder would have received if only stock had been received. ■