

Availability of Section 355 Rulings Further Curtailed

by Robert W. Wood • Bancroft & McAlister

Readers who have recently applied for a ruling under Section 355 may find the experience to be substantially more frustrating than it was a few years ago. While various rulings and procedures purportedly set forth the circumstances in which the Service will rule and those in which it will not, it should be no surprise to readers of *The M&A*

Continued on Page 7

AVAILABILITY Continued From Page 6

Tax Report that there are several non-public criteria that can be encountered in this context.

Now, the office responsible for Section 355 rulings has indicated that there is another area in which a ruling will not be available. The suggestion was that it will no longer be possible to obtain a ruling based on a business purpose of reducing the risks and vicissitudes of a business by achieving a separation. According to a recent speech by Don Leatherman, IRS Branch Chief with responsibility for Section 355 rulings, virtually every business could manufacture or display some risk potential, and a separation may or may not have a significant effect on reducing the risk of the parent.

We all know, of course, that there can be serious liability considerations that may militate in favor of a spinoff. Environmental considerations, for example, may make it insufficient to merely drop a business into a subsidiary, but rather, may favor the distribution of the stock of the subsidiary to eliminate liability through a common parent. The regulations under Section 355 clearly indicate that the need to separate one business from another can be a good business purpose. Unfortunately, the Service apparently will not consider such factors for advance ruling purposes. ■

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