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International Tax Watch

Complex Media Simplifies Substance Over Form

By Ethan Kroll, Matt Mauney, Stewart Lipeles, and Julia Skubis Weber

Introduction

Earlier this year, in *Complex Media Inc.*,[1] the Tax Court addressed, and blessed, a taxpayer's affirmative use of the substance over form doctrine to achieve a basis step up in amortizable intangible assets. Although *Complex Media* is a memorandum opinion and therefore ostensibly involves settled law, we believe that Judge Halpern's reasoning and conclusion in the case reflect a novel, and potentially far reaching, articulation of the standard pursuant to which a taxpayer may disavow the form of a transaction. Specifically, under *Complex Media*, a taxpayer may deviate from the form of a transaction if the taxpayer shows both (i) that the transaction's form does not reflect its economic substance, and (ii) that the taxpayer did not choose the form for the purpose of obtaining U.S. tax benefits (or perhaps even non-U.S. tax benefits) for the taxpayer or a counterparty that are inconsistent with those the taxpayer seeks to obtain by disregarding the form. Readers will be familiar with element (i) of the standard, which applies equally to the IRS. Element (ii), which applies solely to taxpayers, represents the Tax Court's attempt to synthesize decades of case law into a uniform, and useful, guiding principle.

For those readers who have wrestled with when, where, and how to apply the *Danielson* rule[2] (is it necessary to show fraud, mistake, undue influence, duress, *etc.*, in each and every situation?), or been confounded by whether and how the "strong proof" doctrine in *Ullman*[3] and related authorities differs from *Danielson*, *Complex Media* offers an administrable rule: if a transaction is not tax motivated, a taxpayer is entitled to the benefits that flow from the transaction's economic substance regardless of the form. If the transaction is tax motivated, and the desired tax benefits are inconsistent with the benefits the taxpayer designed the structure to obtain in the first place, then only the IRS, and not the taxpayer, is entitled to recharacterize the transaction in accordance with its substance. Put more simply, if a taxpayer chooses a particular structure to achieve one or more U.S. and/or non-U.S. tax benefits, the taxpayer is not allowed a second bite at the apple to recharacterize that form to achieve a different or additional benefit. Thus, so long as recharacterizing to be consistent with the transaction's substance aligns with the structure's objectives, and does not yield what could be described as inappropriate tax benefits, then the taxpayer is allowed to use substance, and not form, to determine its U.S. tax.

In this column, we summarize the facts of *Complex Media*, discuss the reasoning behind the Tax Court's decision, and describe what we understand as the scope of the administrable rule noted above. We then walk through a few common fact patterns to illustrate how we think this rule applies.

Complex Media

The transactions described in *Complex Media* were designed to combine the business assets of a partnership, Complex Media Holdings, LLC ("CMH"), which was cash poor, with the cash OnNetworks Inc. ("ONI") held, into a new corporation, Complex Media Inc. ("CMI"). The parties intended to use ONI's cash to operate the business and buy out one of the CMH partners who objected to the transaction. The parties completed the transaction in two phases. First, as depicted in Figure 1, CMH contributed assets to CMI in exchange for new CMI common shares, and CMI acquired ONI in exchange for new CMI preferred shares.

Immediately thereafter, and as part of the same plan, CMI redeemed a portion of the newly issued shares from CMH for cash, which CMH used to redeem the dissenting partner. These steps are shown in Figure 2.[4]

CMI reflected the transfer of cash as boot in a Code Sec. 351 exchange on its returns despite the form of the transaction documents, which nominally described the transfer as an asset contribution followed by a redemption.[5] Case law overwhelmingly supported disregarding the shares and the redemption in favor of characterizing the cash movement as boot, as CMI did.[6] By reporting the transaction in accordance with its substance, CMI obtained a basis step up in intangible assets under Code Sec. 362(a) and took amortization deductions under Code Sec. 197. If, however, CMI had reported the transaction in accordance with its form, CMI's tax basis would have been limited to the basis CMH had in the assets.

After reviewing and analyzing the leading authorities on whether CMI was entitled to deviate from its form in taking this reporting position,[7] the Tax Court found for CMI because CMI and the other parties structured the transaction "for an obvious nontax reason." As noted above, one of CMH's partners had objected to obtaining financing through ONI. CMH wanted to buy the dissenting partner out but did not have the cash to do so before acquiring ONI. Thus, the parties arranged a plan pursuant to which CMI would redeem out a portion of the shares it issued to CMH, with the proceeds flowing through to the partner under the mechanics of the partnership agreement. In the eyes of the Tax Court, these business objectives did not require CMI to receive a stepped-up tax basis in the CMH assets, which the court characterized as an "afterthought." With no "reason to think that the goals of the tax planning encompassed achievement of a tax benefit" that was inconsistent with a basis step up, the Tax Court allowed CMI to invoke the substance over form doctrine and enjoy the benefit of amortization deductions attributable to this step up.

FIGURE 1.

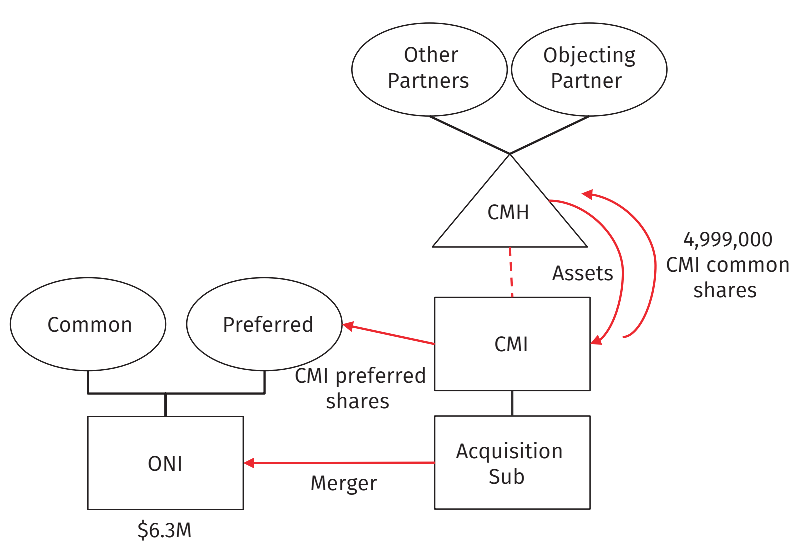
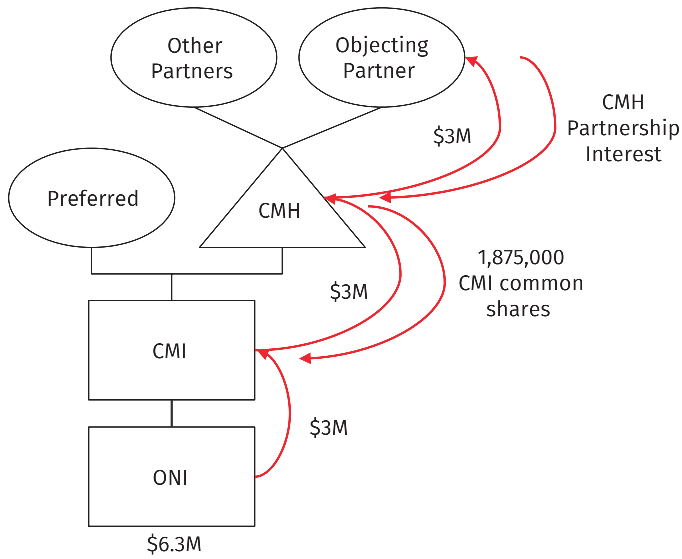


FIGURE 2.



The Tax Court crystallized the rationale for its decision in the following standard. A taxpayer may disavow the form of a transaction if the taxpayer shows (i) that the form of the transaction does not reflect its economic substance, and (ii) that the taxpayer did not choose the form for the purpose of obtaining tax benefits for itself or a counterparty that are inconsistent with those the taxpayer seeks to obtain by disregarding the form.

The first element of the standard is uncontroversial, and we are not aware of any authority that supports allowing a recast that does not flow from the transaction's economic substance. The second element of the standard, or at least its formulation, appears novel. In arriving at the second element, the Tax Court appeared to agree with CMI that the authorities that addressed inconsistent positions on the allocation of consideration to stock and covenants not to compete were really focused on the policy objective of preventing the IRS from being whipsawed through the use of hindsight—*e.g.*, with one party to an agreement reporting capital gain on the sale of stock, and the other party benefiting from a basis step up in an amortizable asset.[8] Although the Tax Court acknowledged that CMI was nominally under the more lenient group of those authorities by virtue of being in the Second Circuit, the Tax Court implied that neither group of authorities articulated a useful standard for when to allow taxpayers to apply substance over form principles generally. The Tax Court also explained that the Supreme Court's decision in *National Alfalfa Dehydrating & Milling Co.*[9] did not apply in the present context because that case addressed a taxpayer that sought to report based on an alternative transaction that did not in fact occur. The Supreme Court's statement to the effect of, as Judge Halpern described it, "a taxpayer, having made its bed, has to sleep in it," did not have any bearing on whether the substance of the transaction the taxpayer did in fact complete is relevant to how the taxpayer can or must report its tax results from that transaction.

Judge Halpern then moved to those cases that were more relevant to the fact pattern in question. *Coleman*[10] involved a relatively complex computer equipment leasing/financing arrangement that aimed to, and in fact did, provide certain lenders with a U.K. deduction equal to the cost of the computer equipment on the grounds that the lenders were treated as the owners of the equipment for U.K. tax purposes. The taxpayers argued that they were also entitled to depreciation deductions for U.S. tax purposes since the partnership in which they held an interest could be viewed as the beneficial owner of the equipment under U.S. case law. The Tax Court refused to allow the taxpayers to apply substance over form principles because the evidence showed that the form of the transaction was chosen to achieve a tax benefit (albeit a U.K. tax benefit) that was inconsistent with the U.S. tax benefit that would flow from the taxpayer's substance over form argument. While, on its face, this inconsistency appeared to stem from the taxpayers' argument that more than one person could benefit from the same depreciation deduction because U.S. and U.K. law viewed different persons as property owners, in fact the inconsistency on which the Tax Court focused was that persons other than the taxpayers held both legal title to and at least some of the benefits and burdens of owning the equipment. Thus, the form of the transaction aligned sufficiently with the transaction's substance to support allocating deductions to the lenders, and not to the taxpayers, for both U.K. and U.S. tax purposes. In this regard, the taxpayers' position was inconsistent with the facts, and, implicitly, the objectives, of the structure to which they were parties.

The fact that the arrangement in *Coleman* was marketed as a tax shelter likely influenced the Tax Court's decision. Nevertheless, the takeaway from *Coleman* is that the taxpayers were held to the facts of the transaction they put in place, and those facts established a *prima facie* substance from which the Tax Court did not permit the taxpayers to deviate.

In *Durkin Est.*,[11] a corporation made a bargain sale of property to one of its shareholders. As part of the same plan, the shareholder sold its shares in the corporation at cost to another shareholder. The objective of the transaction was to dispose of shares in the corporation without recognizing gain. The taxpayer reported the transactions as two separate sales for U.S. tax purposes, consistent with the form of the transactions. When the IRS asserted that the bargain sale was in fact a constructive dividend, the taxpayer attempted to characterize the bargain sale as a redemption in substance. The Tax Court refused to allow the taxpayer to disavow the form of the transactions. The fact that the taxpayer tried to assert substance over form long after the taxpayer had reported the transaction, and only after the IRS had challenged the taxpayer's position, weighed against the taxpayer's recast. These facts suggested that the taxpayer chose the form to achieve a specific tax benefit and was now trying to whipsaw the IRS.

Dyess[12] stands for the proposition that a taxpayer cannot use the substance over form doctrine as a lifeline when the taxpayer's transaction produces undesirable tax consequences. In *Dyess*, the taxpayer engaged in a series of related transactions that occurred in a particular order. In relevant part, the taxpayer formed a new limited partnership that it controlled and sold assets from an existing controlled partnership to the new limited partnership. Shortly after the sale, and as part of the same plan, new limited partners made contributions to the limited partnership, reducing the taxpayer's ownership in the partnership below the relevant control threshold for purposes of Code Sec. 707(b)(2) (under the law at that time, 80%). The tax consequences at issue (whether gain from the sale should be categorized as ordinary income or capital gain) arose because the sale occurred between two controlled partnerships before the new limited partners diluted the taxpayer's control. In other words, the order of the transactions meant the gain from the sale would be ordinary income rather than capital gains. Faced with unfavorable tax consequences, the taxpayer, in hindsight, argued that, despite the chosen order of the transactions, in substance, the limited partnership was formed for the sole purpose of bringing in the new limited partners, and the taxpayer should not be seen as ever having had control over the limited partnership. The Tax Court determined that because none of the new limited partners was under a binding commitment to invest in the limited partnership before the asset sale, the taxpayer was both in form and substance in control of the limited partnership at the time of the sale. The Tax Court therefore refused to allow the taxpayer to "disavow the route he in fact followed for a different route he might have but did not take."

Coleman, *Durkin*, and *Dyess* all inform the construction of the second element of the *Complex Media* standard. First, at least two of the three—*i.e.*, *Durkin* and *Dyess*—expressly involve the use of hindsight to assert substance over form. In both cases, U.S. federal income tax considerations appear to have played a role in the form of the transaction. Only when the taxpayers realized that an alternate approach might yield more favorable U.S. federal income tax results did the taxpayers "find religion," so to speak, in the guise of substance over form. Denying taxpayers the benefit of a recast under the tax version of the doctrine of "unclean hands" makes sense from an equity perspective, as fairness militates in favor of providing taxpayers that structure into what they think are tax beneficial transactions only a single bite at the apple. *Coleman* reflects a similar approach, in that it allows taxpayers to structure into tax benefits, whether U.S. or foreign (or both), that are based on the form and substance of the transaction, but denies taxpayers an additional tax benefit under substance over form principles if that benefit requires the taxpayers to maintain an inconsistent position. Specifically, if the additional benefit requires a reviewing court to turn a blind eye to that portion of the substance that aligns with the form, and to consider only that portion that supports the taxpayer's position, the taxpayer is likely to lose.

As applied to *Complex Media*, the standard yielded a fair result. The parties did not put the *Complex Media* structure in place to obtain tax benefits. Rather, the parties put the structure in place to eliminate a dissenting partner. Therefore, absent a tax motivation for the form of the transaction, the taxpayer was entitled to the tax benefit of the transaction's substance. In addition, once CMI realized that the structure, in substance, resulted in boot in a Code Sec. 351 exchange, CMI reported the transaction accordingly, including the tax amortization from the basis step up, on its U.S. federal income tax returns. Perhaps most importantly, the Tax Court observed that the tax results to the dissenting partner would have been materially the same as those flowing from respecting the CMI stock redemption form the parties used, if the parties had structured the transaction consistent with its substance—*i.e.*, as boot in exchange for assets.[13] CMI could therefore avoid the taint of unclean hands because the facts showed that it was not trying to game the system and also was not using hindsight to whipsaw the IRS.

At the same time, the parties to the transaction *did* report inconsistently. While CMI claimed amortization deductions that reflected a stepped-up tax basis in the contributed assets, CMH did not report any income from the transaction. Moreover, the dissenting partner reported income from a sale of his partnership interest back to the partnership—a position that was incorrect under both the form of the transaction and its purported substance.[14] Yet, the inconsistent reporting did not prevent Judge Halpern from allowing CMI to prevail on its assertion of substance over form because, as noted above, the partner's income would have been the same regardless of whether the transaction was reported as a Code Sec. 351 exchange with boot (consistent with the substance), a taxable redemption (consistent with the form), or not reported at all (consistent with CMH's and the partner's position).

Although the facts proved useful in simplifying the analysis, it is not at all clear that the dissenting partner's U.S. federal income tax obligation would have, or should have, changed the result in *Complex Media*. Judge Halpern observed that "the parties' failure to pursue [alternative structures that would have aligned with the substance of the transaction] suggests that [the tax benefit now being claimed by the taxpayer] was an afterthought-perhaps arising only when [the taxpayer's] accountants began preparing its … tax return." Nevertheless, if the partner's tax obligation resulting from the form had varied from the substance, Judge Halpern may well have determined that the parties had in fact agreed to the form of the transaction to achieve a particular tax benefit.

Finally, it is notable that the official IRS position, supported by a revenue ruling, is that a transfer of property by a taxpayer to a corporation in exchange for transferee corporation stock, followed by the corporation's later distribution of cash to the taxpayer in exchange for the recently issued stock, must be collapsed under step-transaction principles and treated as a transfer of the property in exchange for cash when the clear intent of the parties is to complete the second transaction at the time the first is undertaken, and it is clear the first transaction would not have been undertaken absent the second.[15] Also, the general rule is that the IRS cannot take a litigating position contrary to a published revenue ruling that (i) has not been revoked or modified and (ii) is not inconsistent with an applicable statute or regulation.[16] Curiously, the Tax Court did not address these legal principles in *Complex Media*'s substance over form discussion—perhaps because the taxpayer did not assert them—yet the Tax Court asserted these same principles when the IRS attempted to deviate from the well-established boot allocation rules in Rev. Rul. 68-55.[17]

So, outside of the facts of *Complex Media*, what does it actually mean for a taxpayer not to choose a form for the purpose of obtaining tax benefits for itself or a counterparty that are inconsistent with those the taxpayer seeks to obtain by disregarding the form? The answer, in our view, is that a taxpayer must either have no tax motivation in structuring a transaction or must choose, and be held to, the benefits it seeks, whether from the form or the substance, when it structures the transaction. Substance over form is not the tax version of a mulligan that allows for second chances in the sphere of tax benefits.

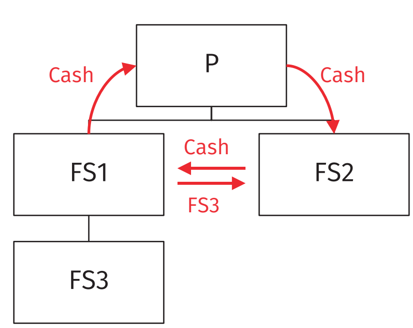
The following examples illustrate how the *Complex Media* standard might apply to familiar fact patterns in the context of cross-border transactions.

Circular Cash Flow

P, a U.S. corporation, owns two foreign subsidiaries, FS1 and FS2. FS1 sells all of its shares in FS3 to FS2 for cash. Immediately after the sale, FS1 distributes the cash to P, which, in turn, contributes the cash back to FS2 (*see* Figure 3).

In substance, the circular flow of cash should be disregarded, and the transactions should be characterized as a distribution of FS3 shares by FS1 to P followed by a contribution of the FS3 shares to FS2.[18] Under the reasoning of *Complex Media*, a taxpayer should be able to apply the substance over form doctrine successfully if the taxpayer can show that the taxpayer did not choose

FIGURE 3.



the transaction's form for the purpose of obtaining tax benefits that are inconsistent with those the taxpayer seeks to obtain under substance over form principles. How would a taxpayer go about proving that it satisfied this test? To start with, a taxpayer would want to report the transaction consistently according to its substance for U.S. tax purposes. Although consistent reporting does not appear to be an absolute requirement under *Complex Media*, it is a best practice and is likely necessary in the related party context. Consistent reporting would also support a conclusion that the taxpayer did not choose the form to achieve a tax benefit that is inconsistent with the purported substance. In addition, consistent reporting from the outset shows that the taxpayer did not set up the structure with a view to achieving a particular tax benefit and then, after a second look, assert a better, or an additional, benefit under substance over form principles. Furthermore, if applicable, a taxpayer could document that it chose the form for non-tax reasons (for example, it may be more efficient from a corporate law perspective to sell the FS3 shares to FS2 instead of distributing and then contributing F3's shares).

The planning point we take away from Complex Media is simple and straightforward: the doctrine of substance over form is a sword that is equally available to good faith taxpayers and the IRS.

At the same time, the focus on intended tax *benefits* does not mean that the taxpayer must compare the U.S. tax cost of the form with the U.S. tax cost of the substance and be held to its form in the event that the cost on the substance side is lower than the cost on the form side. Thus, we read *Complex Media* to suggest that a taxpayer may put in place a particular form solely with a view to achieving tax benefits under substance over form principles and prevail. In fact, a taxpayer should be entitled to select a form that achieves a non-U.S. tax benefit and, at the time same time, assert a substance over form recast for U.S. tax purposes that achieves an additional U.S. tax benefit. In that case, the tax benefits that the taxpayer seeks to obtain through substance over form principles remain precisely the benefits the taxpayer intended when it put the structure in place. So long as the underlying substance truly deviates from the form, and U.S. and foreign law impose tax on a substance over form and a formalistic basis, respectively, the inconsistency that the *Coleman* court identified is absent—namely, a situation in which substance aligns with form and contradicts the taxpayer's substance over form recast.

Debt Versus Equity

P, a U.S. corporation, owns all the shares of CFC1 and CFC2. CFC1 advances funds to CFC2 pursuant to an instrument that is characterized as debt under the tax laws applicable to CFC1 and CFC2. Conversely, under U.S. debt versus equity authorities, the instrument would properly be characterized as equity. How should P report the instrument for U.S. federal income tax purposes? The first question to ask under *Complex Media* is whether the parties chose the form of the instrument to achieve a particular tax benefit that is inconsistent with the benefits that the substance of the arrangement achieves. What if the parties crafted the instrument with a view to providing CFC2 with interest deductions under its tax law? Would this tax benefit be inconsistent with treating the instrument as equity for U.S. tax purposes? CFC2's interest payments under the instrument would have the effect of reducing CFC2's foreign taxes and increasing CFC1's foreign taxes. If this shift in taxes were to achieve a favorable U.S. foreign tax credit result, would the equity character of the instrument achieve tax benefits that are somehow inconsistent with the instrument's formal character as debt? We think the answer is no.

So long as the parties intend both the interest deduction and the U.S. foreign tax credit benefit when they put the instrument in place and report the arrangement accordingly, the substance of the instrument is equity for U.S. tax purposes, and the form of the instrument controls the foreign tax outcome, there is no inconsistency under *Coleman*, *Dyess*, and *Durkin*. The parties are not exercising hindsight, and the parties are not trying to argue substance over form when substance in fact supports form. Rather, the structure achieves precisely the benefits that the parties intended at the outset, both in form and in substance.

Sale Versus License

US1 grants its country X subsidiary, FS1, a license for intangible property. The grant is for perpetual and exclusive rights to use the intangible property within a specific jurisdiction, but US1 retains the right and obligation to protect the intangible property from infringement, *etc*.

The license represents a sale of a portion of the intangible property for U.S. federal income tax purposes, but is respected as a license for country X tax purposes. Under the form, US1 recognizes ordinary royalty income for country X tax purposes. Under the substance of the arrangement, the U.S. treatment depends in part on how the parties structure the consideration under the license—*i.e.*, as a lump sum, as payments over time, as contingent royalties, or as a combination of some or all of the three.

If the country X treatment and the U.S. treatment achieve country X and U.S. tax benefits simultaneously, the result under *Complex Media* should be the same. As with the debt-equity example above, consistent treatment and reporting from the outset, and confirming that the terms of the license do in fact support sale treatment for U.S. tax purposes, will strongly support the contention that the benefits the structure achieves are precisely those that the parties always intended. If that is the case, the taxpayer can demonstrate that it did not choose the form of the transaction for the purpose of obtaining tax benefits that are inconsistent with the benefits of the substance over form recast.

Conclusion

The planning point we take away from *Complex Media* is simple and straightforward: the doctrine of substance over form is a sword that is equally available to good faith taxpayers and the IRS. Accordingly, a taxpayer is empowered to use substance over form principles affirmatively to structure a transaction that achieves both a U.S. tax benefit through its substance and a foreign tax benefit through its form so long as the taxpayer does not do so in hindsight, and the facts of the arrangement support the taxpayer's approach. This conclusion, although unsurprising, is a welcome reaffirmation that the government and the people are, and should be, on an equal footing before the law.

ENDNOTES

1 *Complex Media Inc.*, 121 TCM 1090, Dec. 61,817(M), TC Memo. 2021-14.

2 *C.L. Danielson*, CA-3, 67-1 USTC ¶9423, 378 F2d 771 (refusing to allow a party to a transaction involving stock and a covenant not to compete to deviate from the contractual allocation of consideration between the two assets in the absence of "a showing of fraud, undue influence and the like on the part of the other party").

3 *D.H. Ullman*, CA-2, 59-1 USTC ¶9314, 264 F2d 305 (addressing a similar fact pattern to *Danielson* but requiring a showing of "strong proof" to overcome a contractual allocation).

4 While the Tax Court did not describe when and how ONI's cash moved to CMI, it appears to have moved to CMI prior to the purported redemption.

5 Judge Halpern observed that the CMH contribution did not qualify for Code Sec. 351 treatment because CMH did not "control" CMI within the meaning of Code Sec. 368(c), but since both the taxpayer and the IRS agreed that the contribution qualified for Code Sec. 351 treatment, Judge Halpern accepted the parties' effective stipulation for purposes of addressing the dispute in question. We therefore do not address the interaction of Judge Halpern's Code Sec. 351 conclusion with the IRS position on "control" in the context of simultaneous asset reorganizations and contributions in revenue rulings such as Rev. Rul. 68-357, 1968-2 CB 144, and Rev. Rul. 76-123, 1976-1 CB 94.

6 *See Intermountain Lumber Co.*, 65 TC 1025, Dec. 33,670 (1976) ("If the transferee, as part of the transaction by which the shares were acquired, has irrevocably foregone or relinquished at that time the legal right to determine whether to keep the shares, ownership in such shares is lacking for purposes of section 351."); Rev. Rul. 70-140, 1970-1 CB 73; Rev. Rul. 70-522, 1970-2 CB 81.

7 *R. Coleman*, 87 TC 178, Dec. 43,193 (1986); *J. Durkin Est.*, 99 TC 561, Dec. 48,644 (1992); *C. Dyess*, 65 TCM 2717, Dec. 49,047(M), TC Memo. 1993-219.

8 *See Danielson*, CA-3, 67-1 USTC ¶9423, 378 F2d 771; *Ullman*, CA-2, 59-1 USTC ¶9314, 264 F2d 305.

9 *National Alfalfa Dehydrating & Milling Co.*, SCt, 74-1 USTC ¶9456, 417 US 134, 94 SCt 2129.

10 *Coleman*, 87 TC 178, Dec. 43,193 (1986).

11 *Durkin Est.*, 99 TC 561, Dec. 48,644 (1992).

12 *Dyess*, 65 TCM 2717, Dec. 49,047(M), TC Memo. 1993-219.

13 The Tax Court acknowledged the distinction between a distribution equivalent redemption under Code Sec. 302(d), which would have given rise to dividend treatment, recovery of basis, and/or capital gain under Code Sec. 301, and Code Sec. 351(b) boot allocated among the various assets CMH transferred to CMI in proportion to their relative fair market values. *See* Rev. Rul. 68-55, 1968-1 CB 140 (for purposes of Code Sec. 351(b), realized gain or loss computed asset by asset; boot allocated in proportion to relative asset values). Although the tax consequences to CMH of one alternative or the other would have been different, the Tax Court observed that the tax consequences to the dissenting partner would have been the same. As CMH did not report the transaction at all, following substance as opposed to form in this context did not create what the Tax Court termed, "whipsaw potential," for the IRS.

14 Interestingly, the Tax Court believed that the deal documents demonstrated that the parties intended to treat the cash as boot in a Code Sec. 351 exchange, despite the dissenting partner's inconsistent reporting position.

15 *See* Rev. Rul. 80-221, 1980-2 CB 107 (share issuance followed by tax free redemption recharacterized as a taxable sale where both share issuance and redemption were part of a prearranged, integrated plan, and were interdependent).

16 *See, e.g.*, *G.B. McLendon Est.*, CA-5, 98-1 USTC ¶60,303, 135 F3d 1017 (1998); *G.A. Rauenhorst*, 119 TC 157, Dec. 54,899 (2002); *Dover Corporation*, 122 TC 324, Dec. 55,630 (2004); Reg. §601.601(d)(2)(v)(e) ("Taxpayers generally may rely upon Revenue Rulings published in the Bulletin in determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published Revenue Ruling to the facts of their particular cases. However, since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers … are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, and Revenue Rulings").

17 Rev. Rul. 68-55, 1968-1 CB 140.

18 *See, e.g.*, Rev. Rul. 83-142, 1983-2 CB 68. *See also* Rev. Rul. 77-191, 1977-1 CB 94 (applying substance over form principles to treat an asset distribution by a corporation to its shareholders and a contribution of those assets to a newly formed corporation as a divisive reorganization under Code Secs. 368(a)(1)(D) and 355).

