* 1. Buyer purchases 100% of Target’s stock for $2,000. Buyer does incurs $800 in acquisition costs and makes a Section 338 election with respect to the acquisition. Target has $1,000 of liabilities. $300 of the purchase price is held in escrow as contingent consideration.
     1. Target has the following assets:
        1. Cash: $400
        2. Actively traded securities: $100
        3. Accounts Receivable: $800
        4. Inventory: 500
        5. Other fixed assets: $500
     + Compute Buyer’s AGUB and describe the expected purchase price allocation.
     + Assumed instead that Target has $3,000 of inventory. Compute Buyer’s AGUB and describe the expected purchase price allocation.
  2. Target is a C corporation, incorporated under the laws of Delaware. Target is owned by three individuals: Mr. A, Ms. B and Ms. C. There are 100 shares outstanding, each with a fair market value of $30. The below chart summarizes each individual’s stock ownership.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Shareholders** | | | | |
| Shareholder |  | Mr. X | Ms. Y | Ms. Z |
| Number of Shares |  | 30 | 50 | 20 |
| FMV of Stock ($20/s) |  | $900 | $1,500 | $600 |
| Tax Basis |  | $300 | $2,000 | $150 |
| Potential BIG/BIL |  | $600 | ($500) | $450 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Target’s Assets** | | | | |
|  |  | Tax Basis | Fair Market Value | Potential BIG/BIL |
| Non-Operating Assets |  | $400 | $500 | $100 |
| Operating Assets |  | $1,000 | $1,800 | $800 |
| Totals |  | **$1,400** | **$1,300** | **$900** |
| **Other** | | | | |
| 3rd Party Debt |  | ($700) |  | |
| E&P |  | $600 |

* Acquirer (P) is also a C corporation formed under the laws of Delaware. For each of the questions listed below, please:
  + Analyze whether the transaction(s) described constitute a valid reorganization under section 368(a)(1).
  + Explain the US federal income tax consequences to the parties. (X, Y, Z, T and P)

1. T merges into P under state law. T’s shareholders receive pro-rata $3,000 FMV of P’s non-voting preferred stock.
2. T’s Debt to 3rd Party Lender is $4,000 instead of $700
3. T merges into P solely for P voting stock; Y dissents and is cashed out with T’s non-operating assets (FMV=$500).
4. T merges into P solely for P voting stock; X dissents and is cashed out with the T non-operating assets; X dissents and is cashed out with an amount of the operating assets equal to $1,500.
5. On January 2, P acquires all of the T common stock from Mr. X, Ms. Y and Ms. Z as a result of separate negotiations with each shareholder—solely in exchange for P voting preferred stock.
6. Same facts as #1, but P also agrees to advance $100 in cash to T to pay T expenses.
7. Consider the impact on reorganization characterization if the following transactions occur:

JANUARY 2: P acquires Ms. Z’s T stock for cash [20%]

JULY 1: P acquires Ms. Y’s T stock for P voting stock [30%]

DECEMBER 1: P acquires all of Mr. X’s T stock for P voting stock [50%] AND

* Each transaction is separate;
* Each transaction is part of a single plan;
* The first transaction is separate and the last two are part of a single plan;
* The first two are part of a plan and the last one is separate.

1. On January 2, T redeems Ms. Y and Ms. Z’s T stock for cash and notes. P then acquires all of Mr. X’s T stock solely in exchange for P voting stock worth $500.
2. On January 2, P acquires all the T stock from Mr. X, Ms. Y and Ms. Z solely in exchange for voting preferred stock of P. What tax consequences to the parties if the following transactions occur:
   * Prior to the exchange, T pays a dividend of the T non-operating assets, pro rata to each of Mr. X, Ms. Y and Ms. Z.
   * P pays the costs of registering its common stock when Mr. X, Ms. Y and Ms. Z wish to sell such P stock received in the exchange.
   * P agrees to pay all transfer taxes arising from the exchange.
   * P agrees to pay all legal and accounting fees (incurred by T) associated with the transaction.
   1. Buyer is a commercial food processing business planning on acquiring Target. Starting on 1/1/2022, Buyer started incurring fees for investigating the acquisition.

* On 4/1/2022, Buyer obtained BOD approval on a term sheet that outlines the deal terms.
* On 4/15/2022, after making minor changes to the term sheet, Buyer signed an LOI to get exclusivity and started due diligence.
* Transaction costs incurred included:
  + $20M to investment bankers. $10M contingent on signing and $10M contingent on closing.
  + $12M of legal fees. $4M relates to drafting purchase documents, $2M for proxy solicitation, $3M for SEC filings, $2M for legal due diligence, and $1M for legal fees related to ensuring that Buyer maintains its current business license related to its food processing business post-acquisition.
  + $7M of other consulting fees. $4M relates to due diligence. $3M relates to valuation.
* On 3/15/2022, Buyer signed the purchase agreement. Consider the tax treatment of transaction costs under each scenario:

1. On 6/15/2022, Buyer closed the deal via a reverse subsidiary merger.
2. On 6/15/2022, Buyer closed the deal by having its wholly owned non-US subsidiary purchase Target stock. Buyer makes a 338(g) election.
3. On 6/15/2022, Buyer closed the deal by acquiring Target’s assets directly.