



Federal Tax ADVISORY ■

SEPTEMBER 1, 2017

Dual-Class Stock Blessed for Spin

[LTR 201731004](#) is a significant ruling that approves several techniques that taxpayers have frequently used in spinoffs.

First, it approved a dual voting class structure for stock of SpinCo. Evidently the public parent will distribute the high-vote stock to the public and will retain the low-vote stock. The group will use the low-vote stock to redeem debt. An investment banker will acquire the debt for the parent.

The spin also involved a delayed exchange of assets into SpinCo. And it involved an overlap of directors between SpinCo and the public parent. Finally, it involved possible post-spin payments under a Tax Matters Agreement.

Each of these four features causes concerns for the spinning corporation. Taxpayers would like to have published guidance establishing guidelines for approved solutions, but there are none. This ruling provided this taxpayer these guidelines:

- **Dual class stock**

It permitted the dual classes so long as the structure of stock was maintained for at least 24 months after the spin, with one exception. The exception was a huge one. Many spinco's expect to be acquired. Reg. Section 1.355-7 provides many safe harbors from the Section 355(e) gain recognition rule. In effect, the ruling picks one of those exceptions as a way to eliminate the dual voting structure within 24 months after the spin: merge with another corporation for which there were not negotiations within 12 months before or after the spin, and less than 20% overlap of stock ownership with an acquirer.

- **Debt**

The investment bank that will buy up the parent's debt must hold the debt for at least five days before entering into an agreement to exchange the debt for the retained low-vote stock and must not complete the exchange until at least 14 days after the bank acquired the debt. The stock for debt exchanges must occur within 12 months after the spin.

- **Overlap**

Two officers or directors of the public company will be minority members of the board of SpinCo. They will stand for reelection. Their overlap will not be inconsistent with the business purpose of the spin.

- **Delayed transfers**

The post-spin transfers between SpinCo and the parent that were delayed for regulatory or similar reasons will be treated as if they occurred before the spin.

These and similar issues come up all the time in spins. Taxpayers must either try to obtain a ruling on a significant spin issue or become comfortable with a pattern of rulings for others.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

If you would like to receive future *Federal Tax Advisories* electronically, please forward your contact information to **FederalTax.Advisory@alston.com**. Be sure to put “**subscribe**” in the subject line.

Click [here](#) for Alston & Bird’s Tax Blog.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Federal Tax Group

Sam K. Kaywood, Jr.
Co-Chair
404.881.7481
sam.kaywood@alston.com

Edward Tanenbaum
Co-Chair
212.210.9425
edward.tanenbaum@alston.com

George Abney
404.881.7980
george.abney@alston.com

Brian D. Harvel
404.881.4491
brian.harvel@alston.com

Ashley B. Menser
919.862.2209
ashley.menser@alston.com

John F. Baron
704.444.1434
john.baron@alston.com

L. Andrew Immerman
404.881.7532
andy.immerman@alston.com

Matthew Moseley
202.239.3828
matthew.moseley@alston.com

Henry J. Birnkrant
202.239.3319
henry.birnkrant@alston.com

Stefanie E. Kavanagh
202.239.3914
stefanie.kavanagh@alston.com

Danny Reach
704.444.1272
danny.reach@alston.com

James E. Croker, Jr.
202.239.3309
jim.croker@alston.com

Brian E. Lebowitz
202.239.3394
brian.lebowitz@alston.com

Heather Ripley
212.210.9549
heather.ripley@alston.com

Jasper L. Cummings, Jr.
919.862.2302
jack.cummings@alston.com

Clay A. Littlefield
704.444.1440
clay.littlefield@alston.com

Michael Senger
404.881.4988
michael.senger@alston.com

Scott Harty
404.881.7867
scott.harty@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2017

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghai Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-8580 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333