

801.2
802.4
802.30

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, November 05, 2013 11:58 AM
To: Verne, B. Michael; Walsh, Kathryn
Cc: [REDACTED]
Subject: Intra-person exemption and simultaneous business transfer question
Attachments: FTC Opinion Structure Charts.pdf

Dear Mike and Kate:

We would like your confirmation that for the following transaction, only Person A needs to file as an acquiring person and Person B2 needs to file as an acquired person. We have also attached structure charts to provide an overview of the transaction.

Person A

Person A has a number of controlled subsidiaries but, for the purposes of this request, we have simplified the structure. A is its own ultimate parent entity. A1 is a subsidiary of A. A1 is a corporation, and A indirectly holds 100% of the equity interest in A1. Similarly, A2 is a subsidiary of A. A2 is a limited partnership, and A indirectly holds 100% of the general and limited partnership interests in A2. A3 is also a subsidiary of A. A3 is a corporation, and A indirectly holds 100% of the equity interest in A3. A4 is a limited partnership with the following ownership structure: A1 owns 50% of its limited partnership interest, A2 and A3, combined, own 50% of its limited partnership interest, and A2 owns the general partner of A4, which has no economic interest in A4. Similarly, A4 is indirectly controlled by A.

Person B2

Person B2 is a publicly held limited partnership or master limited partnership and is its own ultimate parent company. It holds a number of operating companies. It has a general partner (B2 GP) that holds the general partner interest of B2. B2 GP has an economic interest in B2 and has incentive distribution rights (IDRs). B1 is a publicly traded corporation. Together, B1's limited partner interests in B2 and its general partner interests do not give B1 the right to 50% or more of the profits or assets on dissolution of B2 and, therefore, B1 does not have HSR control over B2 for HSR purposes.

Person B1

As included above, Person B1 is a publicly traded corporation that is its own ultimate parent entity. B1's primary assets are its ownership of less than 20% of the limited partner interests of B2 and 100% of B2 GP (the general partner of B2). As indicated above, B1 does not have HSR control of B2.

Person C

Person A has established a new limited liability company, Person C, which has no operations or assets other than its ownership of two wholly-owned corporations, C1 and C2. Neither C1 nor C2 has any operations or assets. A2 owns the manager of C (not shown on the attached exhibit).

Transaction

The overall transaction involves multiple documents and several steps, and we divide them into the Contribution Transaction and Merger Transaction (this reflects the documentation).

The Contribution Transaction involves a simultaneous exchange in which A will acquire indirectly, approximately 53% of the common units of B2 in exchange for A2 and A3 contributing to B2 their 50% limited partnership interest in A4 and A2 contributing its general partner interest in A4.

The Merger Transaction involves merging C1 with and into B1, with B1 being the surviving corporation, and will result in B1 being a wholly-owned subsidiary of the new public limited liability company, C. Concurrently, A1 will merge with and into C2, with A1 surviving the merger, resulting in A1 being a wholly-owned subsidiary of C, and thereby C will acquire indirect ownership of the remaining 50% membership interests in A4. After the mergers, A will indirectly hold 70% of the limited liability company units of C, and the public shareholders of B1 will own the remaining limited liability company units of C.

At the end of these steps, (i) A will indirectly hold more than 50% of the interests in B1 (through its ownership in C) and B2, (ii) C will hold an indirect 50% interest in A4 (through its ownership of A1), and (iii) B2 will hold a 50% interest in A4 and the general partner interest in A4.

The parties contemplate that all of these transactions will occur at one closing.

Analysis

The economics of the transaction are that A is acquiring B1 and B2.

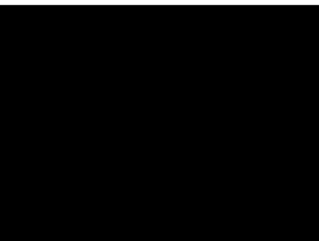
We believe that the Contribution Agreement involves the acquisition by A of B2 and, as such, A will be the acquiring person and B2 will be the acquired person. B2 need not file to acquire the 50% interest in A4 because it is effectively an intra-person exempt transaction. The acquiring person and acquired person are the same because B2 will be acquiring control of A4 but only at the same time that A, which currently has HSR control over A4, will be acquiring control of B2.

We are of the view that the Merger Transaction is not reportable. In the first instance, B1's primary assets are limited partner and general partner interests in B2. Since B1 does not control B2 (or any other material assets), the acquisition is exempt under 802.4 because all that is being acquired is a minority interest in a master limited partnership and a general partnership interest, which have no HSR control over B2. Also, C's acquisition of an indirect 50% interest in A4 is exempt because it will occur at the same time that, and only if, B1 is indirectly acquired by A. It is therefore exempt because the acquiring and acquired person is the same (A).

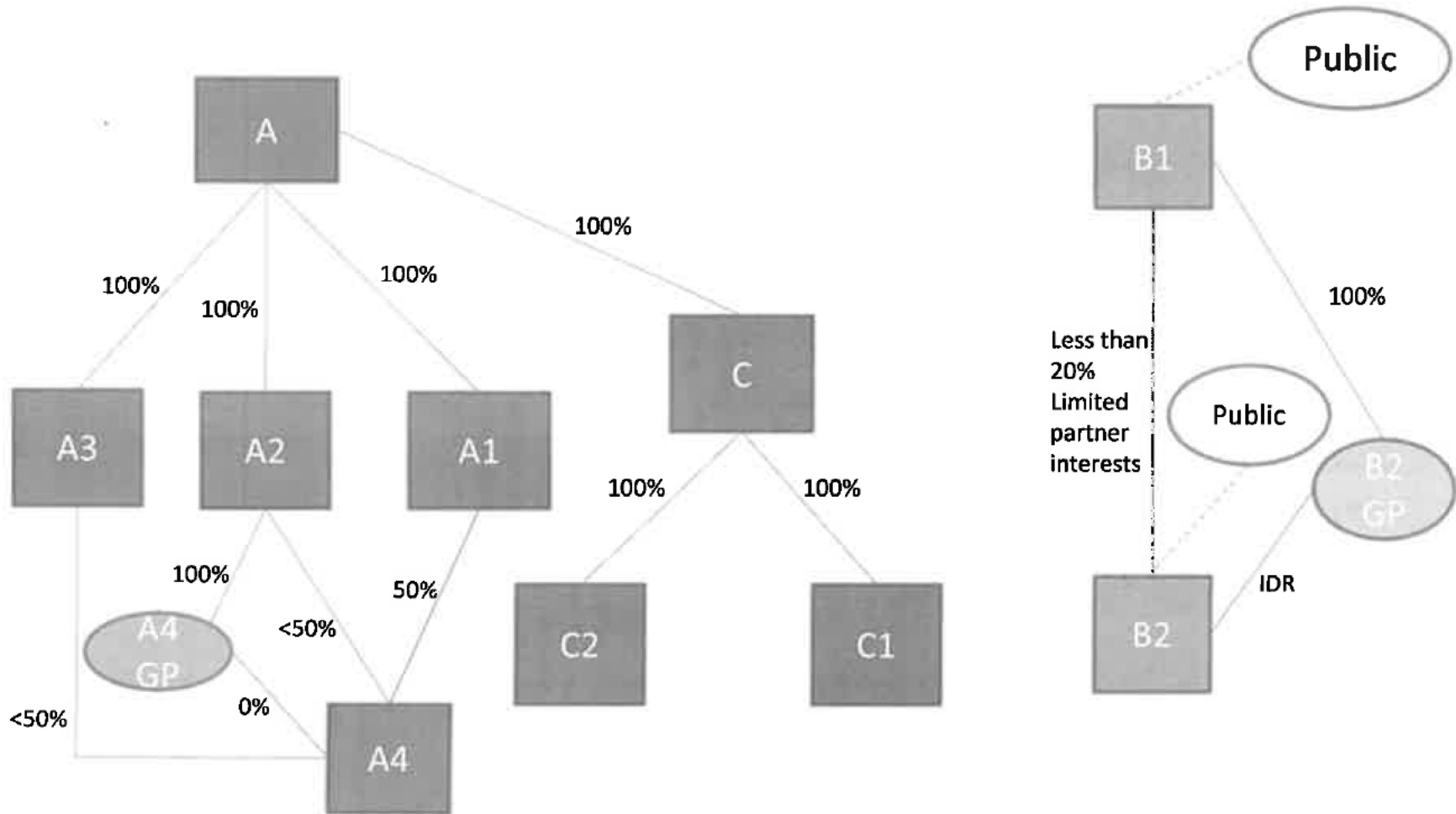
In sum, it would be our understanding that there needs to be only one filing by A as an acquiring person and a related filing by B2 as an acquired person. The critical question we are asking is whether B1 or B2 need to file to acquire A4 (as acquired persons) when, at the same time B1 and B2 are acquiring A4, they are both being acquired by A, which already controls A4. Please advise if you agree with this conclusion.

Thank you,

AGREE
11/5/13



Before Transactions



After Transactions

