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**Verne, B. Michael**

**From:** [Redacted]  
**Sent:** Monday, June 30, 2014 5:27 PM  
**To:** Verne, B. Michael  
**Subject:** Size of transaction question

Mike,

I would appreciate your guidance on calculating the size of transaction for the following transaction.

Transaction Description

Target currently is a corporation with issued and outstanding voting and non-voting stock. None of Target's current shareholders hold 50% or more of its outstanding voting securities, thus Target is its own UPE.

Step 1: The current shareholders of Target will form a new holding company (HoldCo) to hold Target. HoldCo will hold 100% of Target's outstanding voting and non-voting stock. The percentum interest held in HoldCo by each of the shareholders will exactly mirror their original holdings in Target, thus this step is exempt. HoldCo will now be Target's UPE.

Step 2: Target will convert to an LLC. Target LLC will have the same number of voting membership interest and non-voting membership interest as the original Target company had of voting and non-voting stock. This step is exempt.

Step 3: Buyer will acquire 60% membership interest (both voting and non-voting membership interest) of Target LLC for \$70 million cash (or some amount less than \$75.9 million) plus a subordinated note in the amount of \$30 million (or some amount such that the cash plus subordinated note is over \$75.9 million). The 60% membership interest will give Buyer the right to 60% or more of the profits of Target LLC at distribution, and/or the right to 60% or more of the assets of Target LLC in the event of its dissolution, thus Buyer is acquiring control of Target LLC.

Size of Transaction Question

The conversion of Target to an LLC is being done for tax purposes.

If Buyer had acquired 60% of Target when it was still a corporation (prior to its conversion to an LLC), the size of transaction would be based on the value of the voting securities being acquired, not the non-voting securities. This amount would have been below \$75.9 million (even though the total consideration for both voting and non-voting stock would have been in excess of \$75.9million).

Here, Buyer is acquiring 60% membership interest of Target LLC. Some of the acquired membership interest will be voting and some will be non-voting. Does the voting/non-voting membership interest distinction matter for size of transaction calculation purposes now that Target is an LLC? In other words, can we calculate the size of transaction based on the value of the voting membership interest only, or does it have to be based on the full 60% interest of Target LLC (voting plus non-voting membership interest)?

Thank you  
[Redacted]

KW CONCURS

For 60%  
BMW  
7/1/14

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