

ABA SECTION OF TAXATION  
2017-2018 LAW STUDENT TAX CHALLENGE  
OFFICIAL LL.M. DIVISION PROBLEM

You are an ambitious and eager senior associate at a large law firm, Solaris, Nebulous, & Stratus LLP. Up to this point your work has been exemplary, and you have a glowing reputation in the office. For those reasons you are never surprised to see an inbox full of emails from partners asking for your assistance on projects. But today, as you settle in and drink your usual double espresso, you happen to see an email from Albert Sean Larkins, one of your team's most aggressive tax planners. Mr. Larkins has successfully negotiated more than 100 deals in his long, distinguished career, and he is known for tolerating no mistakes, or else you can kick yourself out of the office without even finishing your breakfast. You are giddy with excitement and trembling with fear at the sight of his email. You know that you might be up for junior partner soon and that Mr. Larkins might be the key to getting you there. But you also know that if you mess up now, you can kiss partnership goodbye. With those thoughts in mind, you open his email:

URGENT—Titan Reorganization and Transfers  
Mr. Larkins to Senior Associate #9

Hello Senior Associate #9,

I know you have been on a roll lately with helping us get deals closed, but this time we have a client that needs some serious internal restructuring. Titan, currently my most lucrative client, wants to do a major restructuring of its international operations and a domestic acquisition of a new line of business. Basically, the company is an old and cold international website development and general product distribution business. It has recently started exploring the possibility of expanding to a domestic food distribution business. Titan is a huge moneymaker for this firm, and these transactions have to be executed seamlessly or else they will ditch us. That means you have to be here around the clock making sure we get it right. You might need to take three espressos out of your fancy machine to keep you running.

First a little background. Titan is an e-commerce and computing company that specializes in designing websites to sell its own and other vendors' products. Titan is the parent company of a group of domestic and foreign entities, none of which files a consolidated return. Its operations are thriving, but the future expansion into the food distribution business, which it has been considering for several years as a way to complement its existing business, and the possibility of tax reform weigh heavily on their plans for future operations. Titan is extremely anxious about the effects of tax reform on its business and wants to transfer most of its operations and ownership, except the food distribution business, out of the United States. We have been asked to advise on the tax consequences of a series of transactions that Titan wishes to do in 2018. Please note the organizational charts for Titan that are attached to this email. Here are the specifics on the proposed transactions:

International Transactions

Titan has proposed three transactions that involve its website business. Transaction #1 involves transferring assets from Metis 4 and Metis 5 to Metis 6. Metis 4 contributes to Metis 6, in a valid 351 transaction, hard drives, office chairs, leased desks, and technowidgets that it sells in the ordinary course of its trade or business. Metis 6 plans to use the hard drives in Titan's NYC office to start a new line of products to be sold there. Metis 5 contributes to Metis 6, in a valid 351 transaction, certain Titan licenses, trademarks, knowhow, and goodwill. Titan is not subject to any existing gain recognition agreements ("GRAs") with respect to Metis 4 or Metis 5.

Transaction #2 involves liquidating Metis 3 into Metis 2. At the time of liquidation, Metis 3 owns real property investments located in Virginia and office supplies that it will move to Titan's NYC office. Metis 2 will continue to own both the real property investments and the office supplies. (Note that Titan's NYC office is not a separate entity from Titan US)

For Transaction #1 and Transaction #2 please focus your analysis on the tax consequences in section 367. Another associate will handle the other pieces in subchapter C. For

purposes of your analysis, assume no current law (Code and regulations) will be amended or replaced.

Transaction #3 involves an outbound section 351 contribution of some of Titan US' stock to an unrelated French corporation. Titan's shareholders, more than 100 officers who receive stock-based compensation for their services to Titan US, transfer 70% of Titan's outstanding shares to Saturn in a valid 351 transaction. For this transaction you must determine the tax consequences, if any, to the shareholders. Assume that Titan US is treated as an inverted corporation under section 7874 after the section 351 contribution.

### Domestic Transactions

With respect to expanding into the food distribution business, Titan has identified a domestic target corporation, Total Grocery ("TG"), whose majority shareholders are willing to sell all of TG's assets, with the exception of the assets associated with a canning business, so long as Titan assumes all of its liabilities. All of TG's liabilities are fixed and determinable. The current value of all of TG's assets equals \$5.5 billion, and its liabilities equal \$700 million. The canning assets are valued at \$1.2 billion. Titan knows it would need to buy out dissenting shareholders for \$250 million.

Assuming a satisfactory due diligence report, pursuant to a plan of reorganization Titan expects the following steps to occur late next year:

1. Colossus will transfer 25% of its own voting stock to Goliath 2 in exchange for additional stock of Goliath 2.
2. Goliath 2 will transfer the Colossus stock to TG and will transfer \$250 million of cash on hand to TG's dissenting shareholders. TG, after distributing the canning assets to its shareholders, will transfer all of its remaining assets to Goliath 2, and Goliath 2 will assume TG's liabilities. (Titan understands that TG's shareholders have a contract to sell the Colossus stock to a party unrelated to TG or Titan immediately after this transaction.)
3. TG will liquidate into its remaining shareholders.
4. Goliath 2 will contribute the TG assets to Goliath 3 in exchange for an additional 5% equity interest in Goliath 3. Goliath 3 will in turn contribute the assets to Jumbo, which will continue TG's food distribution business, increasing Goliath 3's interest in Jumbo from 75% to 80%. Goliath 3 will assume the liabilities from Goliath 2.

Specifically, Titan would like to know the answers to the following questions regarding the proposed acquisition:

- 1.A. Do steps #1-3 above constitute a tax-free organization? Why or why not?
- B. Does step #4 affect your analysis of Question 1.A? Does step #4 separately qualify for non-recognition?

You need not address tax implications for any particular entity or individual (e.g., basis or holding period). Rather, focus only on non-recognition. Only address discrete individual aspects of the transaction that do not involve Titan (i.e., the distribution of the canning

business and liquidation of TG) to the extent they may affect Titan's non-recognition treatment.

2. Jumbo is planning on making a cash distribution in 2020. Assuming the assets contributed to Jumbo have built-in gain, could the transaction be viewed as a disguised sale?

### Procedural Issues

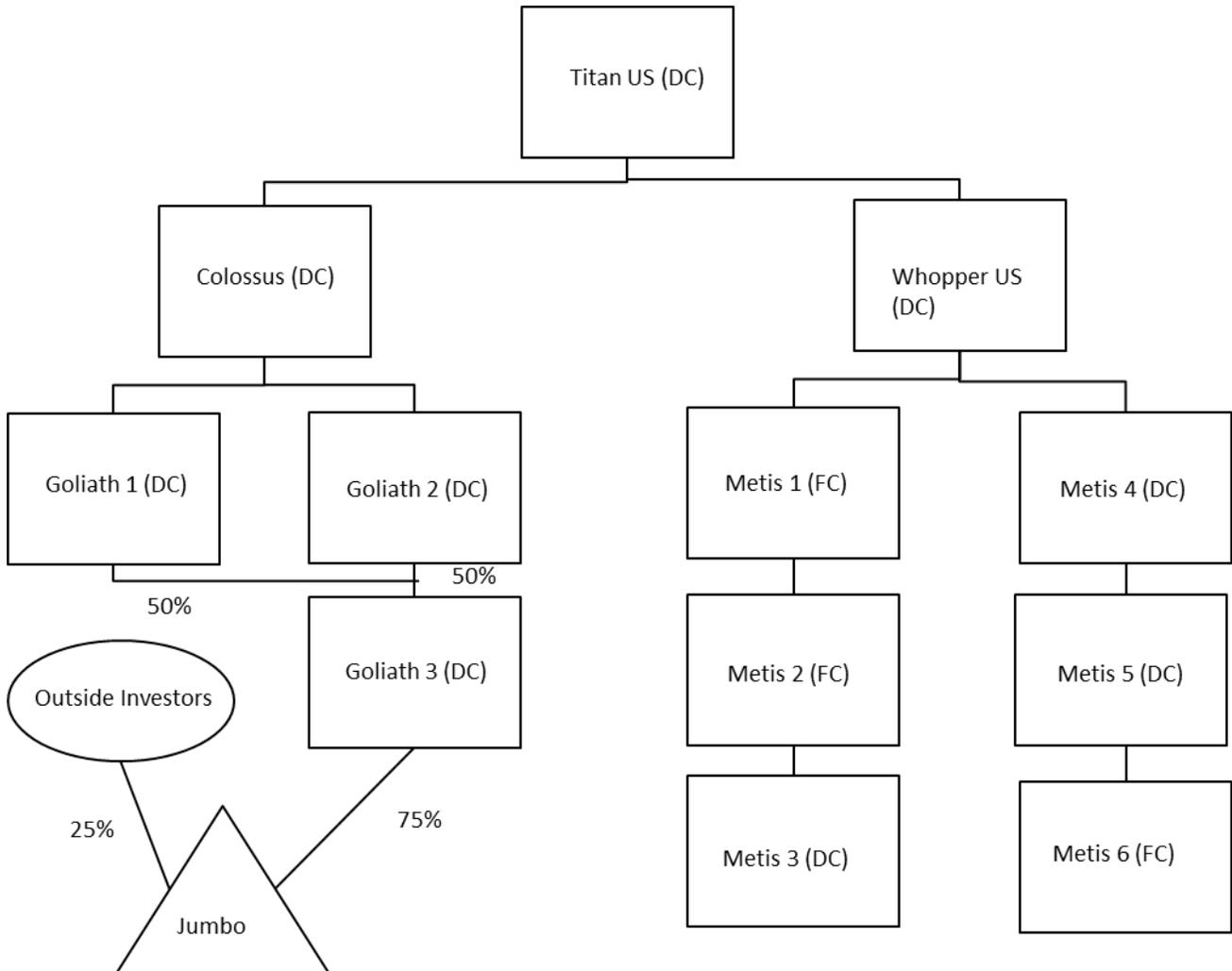
One of Titan's foreign subsidiaries guaranteed a loan that one of its domestic subsidiaries obtained from a foreign bank. It appears that this guarantee should properly be treated as a subpart F inclusion under I.R.C. section 956, but Titan wants to know if the fact that the foreign subsidiary was insolvent at the time it made the guarantee is at all helpful in arguing that there is no subpart F inclusion. I want you to give me a brief answer to this question.

Oh, one last thing: Titan mailed an amended return, showing additional tax due, on June 29, 2016, for its tax year ending June 30, 2013, but the IRS did not receive the return until July 2, 2016. The IRS refused to accept the amended return, claiming it was past the assessment period. The due date was not extended for 2013. I'm sure we'll need to address this issue in exam at some point. What do you think--was the amended return timely?

I need all of this done ASAP so get to it! And try not to bug me with too many questions in the meantime.

Albert Sean Larkins  
Solaris, Nebulous, & Stratus LLP  
625 6<sup>th</sup> St NW, San Diego, CA 92104  
Office: (858) 521-5908 Cell: I wouldn't  
Email: [aslarkins@gotaxnerd.com](mailto:aslarkins@gotaxnerd.com)

# Titan's Current Organizational Structure

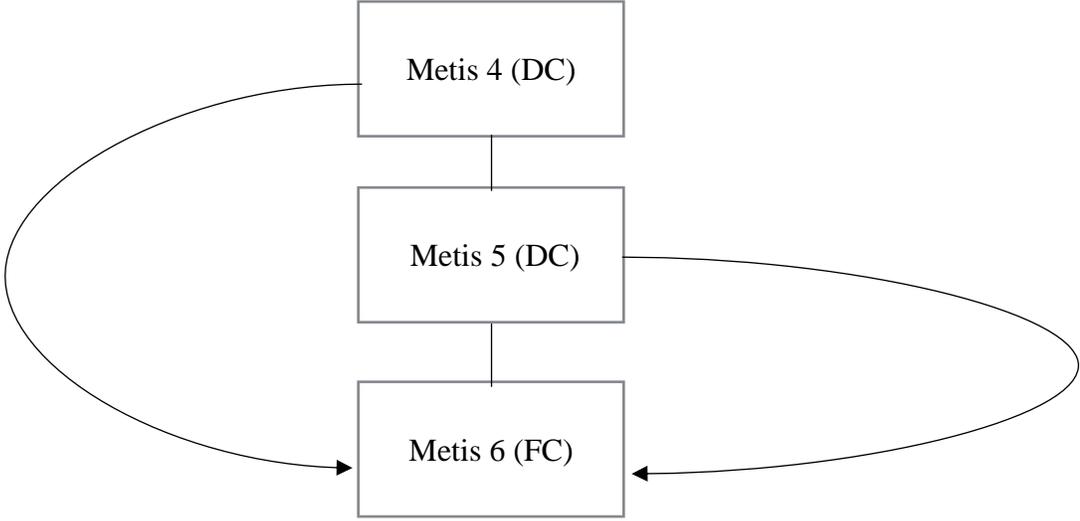


DC = US Corporation  
FC = Foreign Corporation

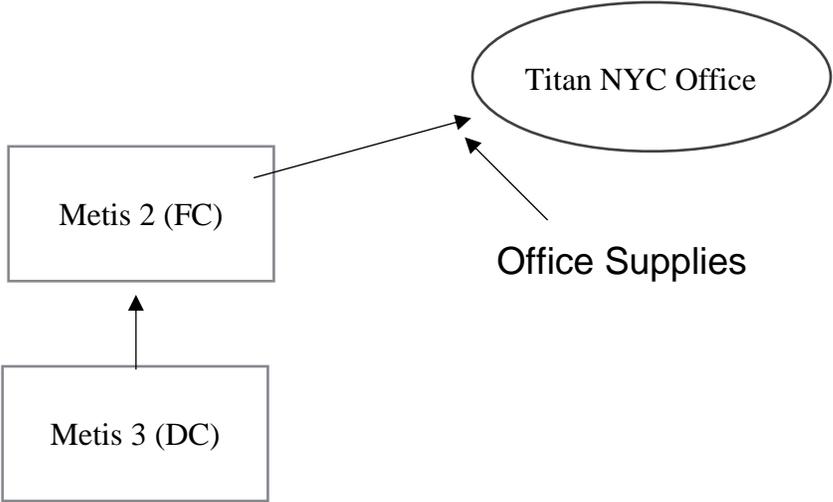
□ = Corporation

▲ = US Partnership

International Transaction #1



International Transaction #2



International Transaction #3

