Comments Concerning Regulations Under Section 368 of the Internal Revenue Code Regarding Mergers Involving Disregarded Entities

Proposed November 14, 2001 (Reg-126485-01)

The following comments are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

The comments were prepared by members of the Committee on Corporate Tax of the Section of Taxation. Principal responsibility was exercised by Benjamin G. Wells. Substantive comments were made by Kevin D. Anderson and Terrill A. Hyde. The comments were reviewed by Robert H. Wellen of the Section's Committee on Government Submissions and by Joseph M. Pari, Council Director for the Corporate Tax Committee.

Although the members of the Section of Taxation who participated in preparing these comments may have clients who would be affected by the federal income tax principles addressed by these comments, or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

Contact:

Benjamin G. Wells
713-229-1210
benjamin.wells@bakerbotts.com

Date: April 11, 2002

The proposed regulations permit certain mergers between corporations and disregarded entities to qualify under section 368(a)(1)(A). Essentially, a merger of a corporation into a disregarded entity may so qualify, whereas a merger of a disregarded entity into a corporation will not so qualify.

We believe that the basic approach taken in the proposed regulations is sound, and we urge that the proposed regulations be adopted in temporary form without delay, especially if issuance of the final regulations is not imminent. This will greatly facilitate business planning.

The Service has indicated a willingness to issue private letter rulings which apply the principles of the proposed regulations. However, the issues are generic and are well dealt with in the proposed regulations. By adopting the regulations in temporary form, Treasury and the Service will eliminate an unnecessary burden on both taxpayers and the government.

Some changes in the final regulations may be in order. We have prepared and submitted, or will shortly submit, detailed comments on the proposed regulations. However, as indicated in those comments, most of our suggestions are in the nature of clarifications and refinements, and under the circumstances we believe that adoption of the regulations in temporary form is warranted.