

Planning Pitfalls

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Pitfalls in Partnership Unwinds, Acquisitions and Restructurings

- Consequences of Deemed Distributions - §708(b)(1)(B)
 - If there is a sale/exchange within a 12-month period of 50% or more of the total interest in partnership capital and profits, then the partnership is constructively terminated.
- Forced Debt Shifts - §752 Allocations
 - If two partners have different initial capital contributions, but share profits and losses and debt equally, there may be a deemed liquidating distribution, resulting in gain recognition under §752(b) and §731.
- Depreciable Life Carryover - §168(i)(7)
 - Under this section, when depreciable property is contributed to a partnership, the partnership steps into the shoes of the contributing partner and inherits that partner's depreciation scheme.
 - Thus, different consequences occur when one partner purchases an interest from the other partner, followed by a distribution of all the partnership property (higher % treated as newly-acquired) versus actually liquidating the partnership first and transferring the property to the partners, who then transact.

Pitfalls in Partnership Unwinds, Acquisitions and Restructurings, cont.

- Deemed Sales
 - When one partner is a creditor and the other partner sells his/her interest to the creditor partner, this can be treated as a purchase of the assets which are deemed distributed.
- Inadvertent Gain
 - When corporation and its shareholder form an LLC, and within 7 years, the shareholder contributes its interest in the LLC to the corporation, this is treated as though the LLC had distributed assets, which shareholder then contributed. If the asset is §704(c) property for the corporation, an actual distribution to the shareholder would create gain recognition under §704(c)(1)(B).