

Tenth
INTERNATIONAL TAX PLANNING CONFERENCE – 2003

**BUSINESS PURPOSE, ECONOMIC
SUBSTANCE,
AND RELATED PROVISIONS OF US TAX
LAW**

Saturday, December 4, 2004
15.20 – 16.00
ITC GRAND MARATHA SHERATON HOTEL, MUMBAI, INDIA
Mumbai, India

Walter T. Raineri, JD/CPA

Fenwick & West LLP
Mountain View, California USA

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Introduction. (page 1)

The new changing landscape for tax planning. (page 1-3)

2004 Tax Act (page 1)

***United States v. KPMG LLP* (page 3)**

Privilege issues (page 3)

Business Purpose Doctrine generally (page 3)

Sham Transaction Doctrine (page 3)

Sham Entity Doctrine generally (page 5)

According to the D.C. Circuit's opinion in *ASA*, an entity will be respected only if both of the following conditions are satisfied: (1) the entity has economic substance (conducts business activities); and (2) there is a valid business purpose supporting the entity's existence. (page 5)

However, consider *TIFD III-E Inc. v. United States*. Partnership entity not disregarded. (page 6)

Step-Transaction Doctrine (page 6)

Case Law Development of the Business Purpose (page 6) and Economic Substance Doctrines. (page 6)

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Judicial Application of the Business Purpose and Economic Substance Doctrines From 1997 to the Present. (page 16)

New Attention to Tax Shelter Type Transactions since 1997 (page 16)

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ASA Investering's Partnership: (page 19)

IES Industries: Taxpayer Wins (page 20)

***United Parcel Service of America: Taxpayer Wins
(page 22)***

A “business purpose” does not mean a reason for a transaction that is free of tax considerations. Rather a transaction has a “business purpose,” when we are talking about a going concern like UPS, as long as it figures in a bona fide, profit seeking business.” (page 23)

RECENT CASES:

Winn-Dixie Stores: Taxpayer Loses (page 24)

Del Commercial Properties: Taxpayer Loses (page 25)

Compaq Computer: Taxpayer Wins (page 25)

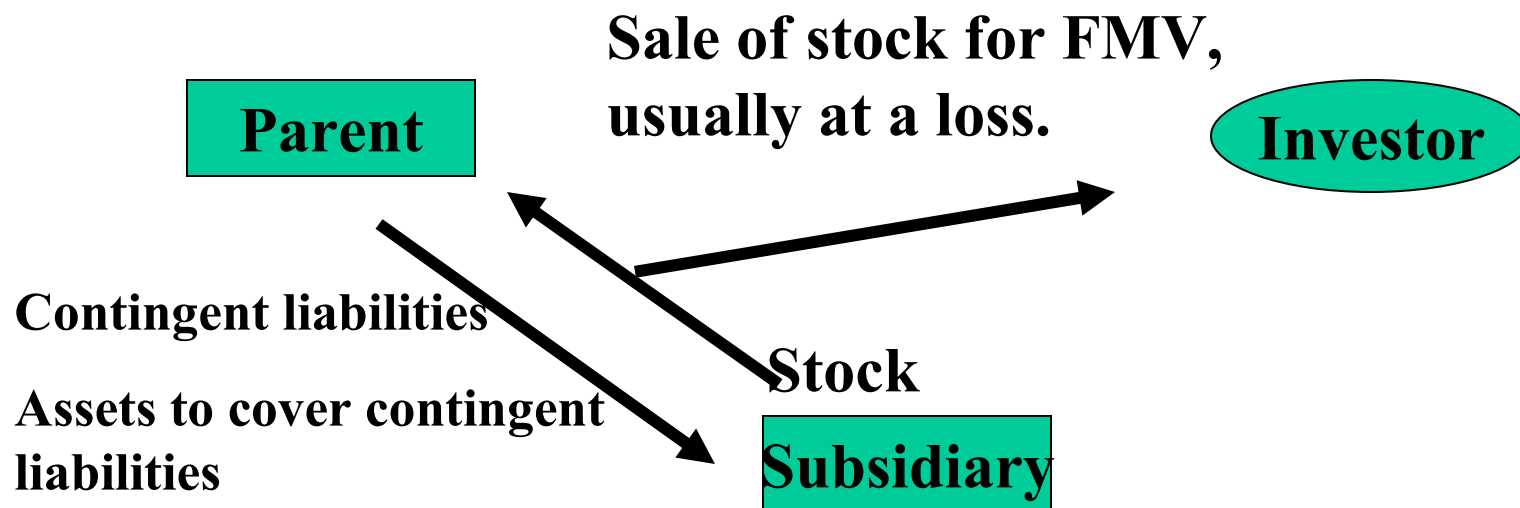
Saba Partnership; Taxpayer Loses (in the end). (page 24)

Boca Investering's Partnership; Taxpayer Loses (in the end). (page 28)

RECENT CASES:

Long Term Capital Holdings and the Reasonable Cause Exception; Taxpayer Loses and is Penalized to the Maximum Degree. (page 29)

Contingent Liability Section 351 and Section 357(c) Cases. (page 32)



RECENT CASES:

Black & Decker Corporation #1: Taxpayer Defeats IRS Motion for Summary Judgment. (page 32)

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**Joint Committee on Taxation Report on Enron
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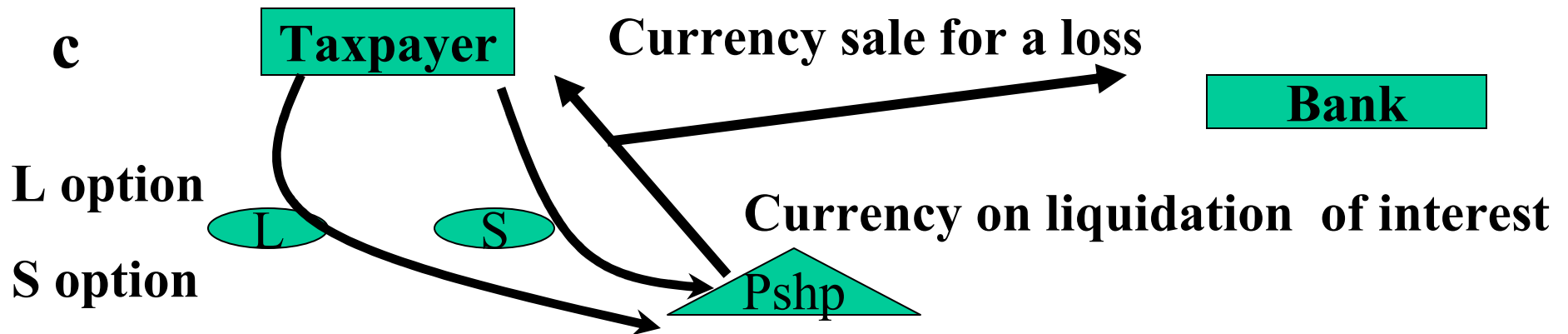
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Son of Boss Type Transactions. Notice 2000-44 (page 41)



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transactions. §6707A. (page 49)**

Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc. §6662A (page 49)

Tax shelter exception to confidentiality privileges relating to taxpayer communications. (page 49)

Statute of limitations for taxable years for which required listed transactions not reported. (page 49)

Disclosure of reportable transactions. (page 49)

Failure to furnish information regarding reportable transactions. (page 49)

Modification of penalty for failure to maintain lists of investors. (page 49)

Penalty on promoters of tax shelters. (page 49)

Modifications of substantial understatement penalty for nonreportable transactions. (page 49)

Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions. (page 49)

Penalty on failure to report interests in foreign financial accounts. (page 49)

Regulation of individuals practicing before the Department of Treasury. (page 49)

END OF PRESENTATION