CHAPTER 6
CORPORATIONS: REORGANIZATIONS

LECTURE NOTES

6.1 REORGANIZATIONS—IN GENERAL

2. Term reorganizations refers to restructurings that may be tax-free under § 368. To qualify as tax-free, reorganizations must meet the following requirements in addition to §368.

- Have a plan of reorganization.
- Meet the continuity of interest and continuity of business enterprise tests.
- Have a sound business purpose.
- Not be subject to the step transaction doctrine.

3. When feasible, parties contemplating a corporate reorganization should obtain an IRS letter ruling to assure the tax treatment that the parties’ desire. A positive letter ruling is, in effect, an insurance policy against adverse treatment by the IRS.

Summary of the Different Types of Reorganizations

4. Types of reorganizations available under § 368(a)(1) include the following.

- Type A includes statutory mergers and consolidations (stock for assets).
- Type B requires that the acquiring corporation give solely voting stock for at least 80% of the target’s stock (voting stock for stock).
- Type C allows the acquiring corporation to use some other assets as well as voting stock to acquire the target corporation’s assets (voting stock for assets).
- Type D reorganizations are either acquisitive or divisive. Divisive reorganizations include a spin-off, a split-off, and a split-up (assets for stock control).
- Type E is a recapitalization of a corporation. Exchanges of stock for stock, bonds for bonds, and bonds for stock are permissible.
- Type F is a mere change in the identity, form (change from a C corporation to an S corporation or vise versa), or place of organization.
- Type G reorganization occurs in association with a Federal or state bankruptcy or similar legal proceeding.

Summary of the Tax Consequences in a Tax-Free Reorganization

5. Treatment of parties involved in a corporate reorganization almost exactly parallels the rules for § 1031 like-kind exchanges. However, the like-kind exchange rules do not apply to stock transactions.

6. Realized gains are generally not recognized by corporations involved in reorganizations.
a. Acquiring corporation may recognize gain if it transfers appreciated property to the target as part of its consideration. The gain equals the fair market value of the property given less its adjusted basis.

b. Target corporation recognizes gain in certain situations.

(1) Target distributes its appreciated property to its shareholders as part of the reorganization. The gain equals the fair market value of the property distributed less its adjusted basis.

(2) Target receives boot (called other property) from the acquiring corporation and does not distribute this property to its shareholders. Other property is any asset other than acquiring corporation stock and securities.

c. Realized losses are not recognized by corporations involved in reorganizations.

7. Shareholders recognize gain (but not loss) under § 356 they receive boot as part of the consideration in the reorganization.

a. Gain recognized is equal to the lesser of boot received or gain realized on the reorganization.

b. Recognized gain is a dividend to the extent of the shareholder’s proportionate share of corporate earnings and profits at the time of the reorganization.

c. If the requirements of § 302(b) can be met, a boot distribution may qualify for stock redemption treatment and be taxed as a capital gain.

- To determine whether a shareholder meets the less than 80% of prior ownership reduction requirement of § 302(b)(2), compare the stock interest actually received in the acquiring corporation to the stock that would have been received if solely acquiring stock had been acquired.

d. Losses can be recognized when the shareholder receives only boot and no stock in the restructuring.

**ADDITIONAL LECTURE RESOURCE**

An early decision, the U.S. Supreme Court in Comm. v. Bedford's Estate, 45-1 USTC ¶9311, 33 AFTR 832, 65 S.Ct. 1157 (USSC, 1945), used imprecise language, which suggested that a distribution of E & P pursuant to a reorganization was a taxable dividend within § 356(a)(2). The Commissioner read the language as establishing, as a matter of law, that all payments of boot should be dividends to the extent of undistributed E & P, the so-called “automatic dividend rule.”
The Supreme Court clarified the application of the stock redemption meaningful reduction in corporate reorganizations in *Clark*, 89-1 USTC ¶9230, 63 AFTR2d 89-860, 109 S.Ct. 1455 (USSC, 1989). Whether a distribution qualifies as a redemption is determined by comparing the shareholder’s owner-ship in the acquiring corporation before and after the boot distribution is considered. Lastly, in Rev Rul 93-61, 1993-2 CB 118, the IRS indicates that it agrees with the *Clark* decision.

**e. Bond holders receive similar treatment as shareholders when the security received has the same face value as the security given up. A debt instrument is generally treated as a security if the term is greater than 10 years (e.g., a bond). If the term is five years or less (e.g., a note), the debt instrument is not considered a security.**

8. **Basis in Assets.**

a. Assets transferred from the target to the acquiring retain their basis. However, basis for acquiring is increased by any gain recognized by target in the reorganization.

b. Shareholder’s basis in the stock received is a carryover basis from the stock relinquished in the reorganization. The basis is increased by any gain recognized and decreased by any boot received (or fair market value of stock received less gain or plus loss postponed). Basis in boot received is its fair market value.

### 6.2 TYPES OF TAX-FREE REORGANIZATIONS

**Type A**

9. **Type A reorganizations are either mergers or consolidations.**

a. There is no requirement that consideration given by the acquiring corporation to the target be voting stock.

b. Money or “other property” received in the exchange will not destroy the tax-free treatment for stock received in the reorganization, if the continuity of interest test (i.e., at least 40% of the consideration used in the reorganization is stock) is met. Money and other property received, however, is boot and is taxable.

**ADDITIONAL LECTURE RESOURCE**

In Notice 2010-25, 2010-14, IRB 527, the IRS indicates that, because temporary regulation § 1.368-1T(e)(2) has expired, taxpayers should rely on proposed regulations issued contemporaneously with temporary regulations. The texts of the proposed and temporary regulations are the same. Temporary regulations expire three years after
issuance if they have not been formalized into final regulation. § 1.368-1T(e)(2) was issued on March 20, 2007 and therefore expired on March 19, 2010.

Reg § 1.368-1T(e)(2) provided the guidance as to the percentage of continuity of interest that is necessary for corporate reorganizations. This percentage was 40%.

c. Type A reorganizations must comply with foreign, state or Federal statutes.

(1) Complying with required laws may be problematic when laws require consent to the reorganization by majority shareholders of all corporations involved. Addressing dissenting shareholders rights can also be difficult.

(2) In addition, all liabilities of the target corporation must be assumed by the acquiring corporation as a matter of law.

(3) Target corporation liquidates by operation of law.

ADDITIONAL LECTURE RESOURCE

Subsidiary used in a Type A Reorganization. Many of the problems in meeting the statutory requirements are reduced if the acquiring corporation uses a controlled subsidiary as the actual acquirer. Using a subsidiary as the acquiring corporation allows the parent to protect its assets from the creditors of the target corporation. Approval by the acquiring corporation’s majority shareholders is easier because only approval of the parent corporation’s board of directors is required.

The parent corporation may want the target corporation’s shareholders to hold parent stock rather than the subsidiary stock. This enables the parent to retain control over the subsidiary. A typical Type A reorganization using a subsidiary is diagrammed in Instructor’s Guide Figure 7.1. The exchange of a parent’s stock by a subsidiary qualifies as a tax-free Type A reorganization if (1) no subsidiary stock is used and (2) the exchange would have been a Type A reorganization had the merger been into the parent.

Type A subsidiary reorganizations can be described as follows.

- A downstream merger occurs when the parent corporation is merged into its subsidiary. The shareholders of the parent become shareholders of the subsidiary.

- A forward triangular merger is the merger described in the second paragraph of this Lecture Resource. The target mergers into a subsidiary of the acquiring parent corporation.

- An upstream merger is when a less than 80% owned subsidiary is merged into its acquiring parent. When an 80% or more owned subsidiary is absorbed by its parent, the restructuring is generally treated as a liquidation of the subsidiary under § 332, and not as a reorganization.
A reverse triangular merger occurs when a subsidiary of the acquiring parent is merged into the target corporation and the target corporation becomes the surviving subsidiary of the parent. After the original subsidiary has transferred substantially all of its assets to the target, it liquidates. The former shareholders of the target corporation must receive only voting parent corporation stock that is equal to at least 80% of all of target’s outstanding shares.
10. In Type B reorganizations, one corporation acquires a controlling stock interest in another by using solely voting stock as consideration. A parent-subsidiary relationship is created.

   a. Target stock may be acquired from either shareholders or the target corporation. Parent must hold at least an 80% controlling interest after the reorganization.

   b. Acquiring corporation need not “acquire” the full 80% of target’s stock from the reorganization transaction; it must merely meet the 80% control requirement after the acquisition. Acquiring corporation could have owned stock in target prior to the reorganization [Reg. § 1.368-2(c)].

   c. Acquiring corporation must use only voting stock as consideration. Even a minor amount of other property such as cash will destroy the tax-free benefits. The one exception is payments for fractional shares.

   d. Type B has the advantage of being simple. No gains or losses are recognized by the corporations or shareholders party to the reorganization. However, the disadvantage is that only voting stock of the acquiring corporation may be used as consideration. Further, if the acquiring corporation does not obtain 100% of the target’s stock, problems may arise with the minority shareholders of the target.
Using a subsidiary: Similar to a Type A reorganizations, the Type B reorganizations may also be accomplished utilizing a subsidiary.

- The parent corporation creates a subsidiary to complete the reorganization. The subsidiary must exchange solely voting stock of its parent corporation for the target corporation’s stock (see Instructor’s Guide Figure 7.3). If both parent’s and subsidiary’s stocks are used in the exchange, the reorganization will not qualify as a Type B.

- The results of a reverse triangular merger are the same as a regular Type B reorganization; the acquiring corporation becomes the parent of the target corporation.

**FIGURE 6.3**
Subsidiary Type B Reorganization

Target Corporation becomes a subsidiary of Acquiring Corporation

After Type B

Debt Assumption by Acquiring: In Rev Rul 98-10, 1998-1 CB 643, the IRS considered substitution of the acquiring corporation’s debenture securities for those of the target as separate transaction and not spoiling the solely voting stock requirement of § 368(a)(1)(B). The debenture exchange was treated as pursuant to a plan of reorganization [§ 368(a)(1)(E)] and, as long as the principal amounts of the securities were the same, no gain or loss was recognized by the shareholders.
Type C

11. In Type C reorganizations, one corporation acquires substantially all the assets of another corporation in exchange for voting stock and a limited amount of other property.

   a. Target corporation must distribute to its shareholders all of the stock and other assets received in the exchange as well as any of its assets not transferred to acquiring corporation. The target corporation liquidates after the transaction is complete.

   b. Shareholders will recognize gain only to the extent they receive other assets in exchange for their stock in the target corporation.

   c. Acquiring corporation assumes only the target’s liabilities that it chooses; not all the liabilities as in a Type A reorganization.

      • Normally the acquiring corporation is not liable for unknown or contingent liabilities of the target. What happens to these liabilities? They become the responsibilities of the former target shareholders.

   d. Acquiring corporation has some flexibility regarding the consideration it may use in the reorganization. At least 80% of the consideration must be acquiring voting stock, which allows up to 20% of the consideration to be cash, property, and/or liability assumption.

      (1) If acquiring uses cash and property as consideration, the target’s liabilities assumed by the acquiring are also considered other property. This usually causes the other property to be in excess of the 20% limit.

      (2) If acquiring gives only its own voting stock as consideration, the liabilities assumed are disregarded and not treated as other property.

   e. Substantially all of the target’s assets must be transferred to acquiring. The IRS defines substantially all as at least 90% of the net fair market value of the net assets and at least 70% of the gross assets.

   f. Acquiring’s prior ownership of target stock will not prevent the “solely for voting stock” requirement to be met in Type C reorganizations.

   g. Type C normally is less complex than the Type A when complying with foreign, state, or Federal law requirements. Usually dissenters’ rights are only given to shareholders of the target corporation. Further, in some states, approval is only required from shareholders of the target corporation.
Solely Stock Requirement: Final Reg. § 1.368-2, reverses the long-standing opinion of the IRS that a “creeping acquisition” could disqualify a Type C reorganization. Rev Rul 54-396 was subsequently upheld by *Bausch & Lomb* (CA-2, 59-1 USTC ¶9468, 3 AFTR2d 1497, 267 F.2d 75). The *Bausch & Lomb* doctrine prevented tax-free status when there was a previous purchase of target stock by acquiring in an unrelated transaction. The repeal of this doctrine permits prior ownership of target stock (if acquired in a unrelated transaction) to be disregarded in determining whether the requirement of “solely for voting stock” are met.

Using Subsidiary: A Type C reorganization also can be accomplished by using a subsidiary. The formulations of subsidiary Type C reorganizations are similar to those that can be accomplished using a Type A. The diagrams for Type C and Type A subsidiary reorganizations would be the same (see Instructor’s Guide Figure 7.1).

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**Type D**

12. There are two kinds of Type D reorganizations: Acquisitive and Divisive.

   a. **Acquisitive Reorganization**: The target absorbs the acquiring (sometimes called the minnow swallowing the whale).

   (1) Unlike other reorganizations, the target transfers a controlling interest in its stock for the assets of acquiring. Thus, it is acquiring that is transferring assets rather than target. The target stock received by acquiring must be distributed to its shareholders in a transaction qualifying under one of the following Code sections: § 354, § 355, or § 356.

   (2) For acquisitive D reorganizations, § 354 requires that substantially all of the property of the acquiring corporation be transferred to the target corporation for control of the target.

      (a) Control is owning at least 50% of total voting stock or 50% of total value of all stock classes. No ownership attribution is permitted in determining whether the control test is met. See § 368(a)(2)(H), which refers to the control requirements found in § 304(c).

      (b) All stock and property received from the target as well as property retained by the acquiring corporation (i.e., not transferred to the target) must be distributed to its shareholders. The acquiring corporation then terminates.

   (3) If an acquisitive Type D could also qualify as a Type C, the Code provides that the reorganization will be treated as a Type D. This ensures that distribution of stock and securities will comply with § 354 or § 355.

   b. **Divisive Reorganization**: Division of a corporation into two or more
corporations.

(1) Most typical divisive D reorganizations are spin-offs, split-offs, or split-ups.

(a) In a spin-off the distributing corporation transfers some of its assets to a new corporation in exchange for its stock. New corporation stock is transferred to the distributing corporation’s shareholders.

(b) A split-off is similar to a spin-off but the shareholders of the distributing corporation must surrender some of their distributing corporation stock upon receipt of the new corporation stock.

(c) In a split-up the distributing corporation transfers all of its assets to two or more new corporations in exchange for their stock. The stock of the new corporations is exchanged for the stock of the distributing corporation, and the distributing corporation liquidates.

(d) Rather than creating new corporations, existing corporations receive the assets. The transferring corporation must obtain control of the existing corporation.

(2) In the divisive reorganizations the distributing corporation must obtain control of the new (target) corporation. The § 368(c) control requirement applies which defines control as at least 80% of the total voting stock and at least 80% of the total number of shares of all other classes of stock.

(3) All stock and other property received by the distributing corporation must be transferred to its shareholders.

(4) To meet the § 355(b) requirements the distributing and the new controlled corporations must, after the reorganization, both be actively engaged in a trade or business previously conducted in by the distributing corporation for at least five years prior to the restructuring.

c. Code § 368(a)(2)(H) clarifies that control for all reorganizations is measured at the point the transaction is completed and does not consider other events regardless of their proximity in time to the restructuring.

**Type E**

13. Type E reorganization is a recapitalization; a major change in the character and/or amount of outstanding stock, securities, or paid-in capital of a corporation. Only one corporation is involved in a Type E restructuring.

a. Changes in corporate capital structure qualify as Type E reorganizations.

   (1) Stock for stock. This includes common stock for common, preferred stock for preferred, common for preferred, and preferred
for common. However, the preferred for common may qualify as § 306 stock.

(2) Bonds for bonds. If the principal amount of the bonds received is greater than the principal amount of the bonds relinquished, the excess amount will be taxable as boot.

(3) Bonds for stock. To the extent that stock is received for interest in arrears, the recapitalization is not tax free.

b. Stock for bonds does not qualify.

Type F

14. Type F reorganizations are a mere change in identity, form, or place of organization.

a. Although the reorganization is limited to a single corporation, this limitation does not preclude the use of more than one corporation in the restructuring. For example, an operating corporation in New York creates a new corporation in Delaware, transfers all of its assets to the new corporation, and then liquidates. This reincorporation in a new state is a Type F reorganization.

b. Changing from a Subchapter S to a Subchapter C (regular) corporation or visa versa qualifies as a Type F reorganization.

c. When a corporation changes its name, this is technically a Type F reorganization.

d. If a reorganization can qualify as a Type A, C, or D as well as a Type F reorganization, it is treated as a Type F.

Type G

15. In Type G reorganizations, substantially all of a debtor corporation’s assets are transferred to an acquiring corporation under a court-approved reorganization in bankruptcy (e.g., under Title 11, USC or similar state court proceeding), receiverships, and foreclosures.

a. To qualify for a Type G, the debtor corporation must be insolvent and thus the creditors are the true owners of the corporation.

b. The stock and securities of the acquiring corporation are transferred to the senior creditors in exchange for their claims against the debtor corporation. They continue their interest as owners rather than as creditors.

c. The former shareholders may not receive any stock in the acquiring corporation.

d. Acquiring corporation in a Type G reorganization must reduce the tax attributes carried over from the bankrupt corporation to the extent of the cancellation of debt income relief. Tax attributes are reduced in the following order.
• Net operating losses (NOL).
• General business credits (GBC).
• Minimum tax credits (MTC).
• Capital loss carryovers.
• Basis in property.

Note that the order in which the tax attributes are reduced is not the same as for § 382.

e. Type G reorganization must follow a plan approved in a bankruptcy proceeding, therefore, planning opportunities are very limited.

6.3 JUDICIAL DOCTRINE

16. Besides the statutory requirements, reorganizations must meet several judicially created mandates. Some of these have been included in the Regulations.

17. There must be a plan of reorganization that contemplates a restructuring falling under one of the Code sanctified reorganizations. It is specifically required by §§ 354 and 361.

a. Reorganization plan does not have to be formally written but the parties to the reorganization must be able to demonstrate a plan. Written communications to shareholders and evidence in the corporate meeting minutes will qualify as evidence of a plan.

b. Having a reorganization plan helps distinguishes transactions that are integral to the restructuring from those that are not part of it, but may be in close proximity as to time.

Sound Business Purpose

18. Sound business purpose test requires a reorganization to have a bona fide business purpose or economic consequence other than avoidance of taxes.

a. This requirement limits tax-favored treatment to only those restructurings that meet the valid needs of the corporation.

b. That there is no tax avoidance motive does not establish that there was a sound business purpose.

c. Sound business purpose should be that of the corporation. However, it is often difficult to distinguish between a corporation’s and the shareholders’ purposes.

d. Lack of a sound business purpose cannot be used as a argument by the taxpayer to destroy the tax-free nature of a reorganization. The taxpayer may not want a restructuring to qualify as a reorganization, say, if a step-up in the assets’ bases is desired.
Continuity of Interest

19. Continuity of interest test requires that the target’s shareholders receive a substantial equity interest in the acquiring corporation in order for the reorganization to be tax-free.

a. Purpose of this requirement is to prevent transactions that resemble sales from qualifying as reorganizations.

b. Regulations deem that if target shareholders receive acquiring stock equal in value to at least 50% of all target stock formerly outstanding, this test is satisfied. The test is applied in aggregate to shareholders; thus, not all shareholders must receive stock in the acquiring corporation to meet this test.

c. If the continuity of interest test is met at the time of the reorganization, a stock sale immediately before or after by a shareholder to an unrelated party will not affect this requirement.

Continuity of Business Enterprise

20. Continuity of business enterprise doctrine ensures that the target business continues after the reorganization. The ownership but not the business of the target has changed.

a. Test can be met by the acquiring corporation by either continuing the target’s historic business, or using a significant portion of the target’s assets.

   (1) If the target has more than one business line, continuing any one of the significant business lines is sufficient (Reg. § 1.368-1).

   (2) Using a “significant” portion of the target’s assets is based on the relative importance of the assets to business operations.

b. Continuity of interest and business doctrines apply only to reorganizations where two or more corporations are involved. Accordingly, these doctrines do not apply to Type E and Type F reorganizations.

Step Transaction

21. Step transaction doctrine was created by the courts to ensure that transactions performed in a series of steps result in the same tax consequences as if the plan was executed in a single step. In the reorganization area, the doctrine is used to determine whether a series of transactions results in a tax-free restructuring.

a. Target and the acquiring corporations’ ownership may be compared before and after the series of transactions to determine whether the steps in the transactions should be collapsed.

b. A problem may exist when acquiring does not want substantially all of the target’s assets, a requirement in a Type C and acquisitive Type D.
c. Without evidence to the contrary, the IRS generally views transactions occurring within one year as part of the same restructuring.

a. Step transaction doctrine may be applied to benefit corporations involved, rather than just to their detriment. Triangular reorganizations qualifying as Type A, Type B, and Type C, are examples of where beneficial applications can be made.

6.4 TAX ATTRIBUTES CARRYOVERS

Assumption of Liabilities

22. Since the target continues in some manner after a reorganization, the acquiring generally assumes the target’s liabilities.

a. Liabilities assumed are not considered boot when determining gain recognition by the corporations who are parties to the reorganization.

b. Liabilities assumed can cause problems in Type C reorganizations when acquiring also transfers “other property” to target. A Type C requires that at least 80% of the consideration must be voting stock.

c. In a Type G, the target’s liabilities are not assumed by the acquiring entity.

Allowance of Carryovers

23. Section 381 lists the target corporation’s tax features that may be carried over to the successor corporation. Section 381 applies to the Type A, Type C, Type F, Type G, and the acquisitive Type D reorganizations.

Net Operating Loss Carryovers

24. When a NOL is carry over under § 381, the amount that available to the surviving corporation for use in future years is limited under § 382 when there is at least a 50 percentage point ownership change that is caused by an owner shift or an equity structure shift.

a. An owner shift is any change in the common stock ownership of shareholders owning at least 5%. All shareholders owning less than 5% are treated as one shareholder for determining ownership changes.

(1) Shift may be caused by recapitalization, purchases, redemptions, issuances of stock, and transfers to controlled corporations. A shift is not caused by transfers to spouse or trust, due to gifts or death, or due to divorce or separation.

(2) Change is determined by examining the common stock ownership over a testing period. The testing period is defined as the shorter of
the prior three years or the period following the most recent ownership change.

b. An equity structure shift occurs with tax-free organizations other than Type F, divisive Type D, or divisive Type G.

   (1) Change date for an equity shift is the date the reorganization takes place.

   (2) End result of an equity structure shift is an owner shift. Thus, the treatment of an owner and an equity shift are the same.

25. Maximum NOL carryover that is available to offset taxable income each year is equal to the value of the loss corporation’s stock on the change date multiplied by the long-term tax-exempt rate. This is called the § 382 limitation.

   a. Value of the loss corporation is fair market value of both common and preferred immediately before the ownership change.

   b. “Anti-stuffing” rules prohibit increasing the loss corporation’s value by making capital contributions of appreciated assets within two years prior to the change date.

26. Objective of the § 382 limitation is to restrict the yearly NOL benefit available to acquiring. Section 382 does not disallow any portion of the NOL; it merely limits the annual NOL benefit. The yearly § 382 limit is computed as follows:

   \[
   \text{Loss corporation’s FMV} \times \text{Federal long-term tax exempt rate} = \text{Yearly § 382 limit}
   \]

   a. While § 382 does not disallow any portion of an NOL, it may cause the NOL to expire unused.

      (1) Present value analysis is relevant for determining the value of the target’s NOL to the acquiring corporation. Present value tables are provided in the text at the end of Chapter 7.

      (2) NOL benefits that cannot be utilized until the distant future are almost worthless in present values dollars. See Example 36 for computation.

   b. NOL amounts available in the initial tax year after the transfer date are further limited by § 381 to a percentage representing the remaining days in the tax year after the transfer date. The first year limitation is computed as follows:

      \[
      \frac{\text{Yearly § 382 limit} \times \text{number of days remaining in the year}}{365} = \text{Initial § 382 Limit}
      \]

   c. Any § 382 limitation not used because of insufficient taxable income may be carried forward to future years.
d. NOL carryforwards are disallowed in entirety if the surviving corporation fails to satisfy the continuity of business enterprise requirement for a two-year period following any ownership change or equity structure shift.

**Earning and Profits**

27. Target corporation E & P carries over to the acquiring corporation.
   
a. If target’s E & P is positive, it is added to acquiring’s E & P.
   
b. If target’s E & P is negative, the deficit may only offset E & P created after the restructuring. Thus, acquiring will have two E & P accounts, one containing prior restructuring E & P and the other containing the deficit E & P from target plus any post-restructuring E & P.
   
c. In divisive reorganizations, the E&P is distributed among the corporations based on their relative net values (relative market values of their shares).

**Other Carryovers**

28. Capital losses and excess tax credits carryovers are also subject to § 382 limitations and the year-of-transfer limitation.
   
a. When a corporation has several types of attributes carried over from the loss corporation, they are applied to the § 382 limitation in the following order.
   
   - Built-in capital losses.
   - Capital loss carryforwards (short-term when carried forward).
   - NOL carryforwards.
   - Foreign tax credits.
   - Business credit carryforwards.
   - Minimum tax credit carryforwards.
   
b. Steps for computing excess credits allowable in current year are as follows.

   (1) Calculate regular tax liability after allowable losses.
   
   (2) Calculate regular tax liability as if the full § 382 limitation is allowable.
   
   (3) Subtract the tax liability in step 2 from the tax liability in step 1. This is the § 382 limitation remaining for excess credits.

**Disallowance of Carryovers**

29. Carryovers may be disallowed under § 269 if a corporation acquires another corporation primarily to avoid income taxes.