

802.4
802.51

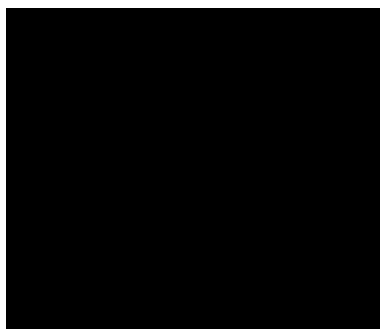
Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 14, 2009 12:15 PM
To: Verne, B. Michael
Subject: 802.51

Hi Mike--

I have a quick question.

Where a foreign acquiring person is acquiring a foreign ultimate parent that holds 100 percent of 3 subsidiary companies one of which is French, one Korean and one incorporated in Delaware, how do you apply Section 802.51? Is the acquisition of the Delaware issuer (through the acquisition of the parent) carved out of 802.51? Thanks



This is one instance where § 802.4 might exempt the transaction even if § 802.51 does not. Under § 802.51, all of the US sales and US assets of the Delaware sub (along with any sales into the US and US assets of the two foreign subs) are attributed to the parent. So if either US sales or US assets exceed \$65.2 million, § 802.51 would not exempt the transaction.

Under § 802.4, you look through all of the subs to their underlying assets. If all of the foreign assets have in aggregate less than \$65.2 million in sales into the US, they can be excluded from the § 802.4 analysis. If then the remaining US assets have a fair market value of less than \$65.2 million, the acquisition of the parent is exempt under § 802.4.

I'm attaching a tip sheet that walks through this analysis.

http://www.ftc.gov/bc/hsr/802_4tipsheet.shtm

BW
4/14/09