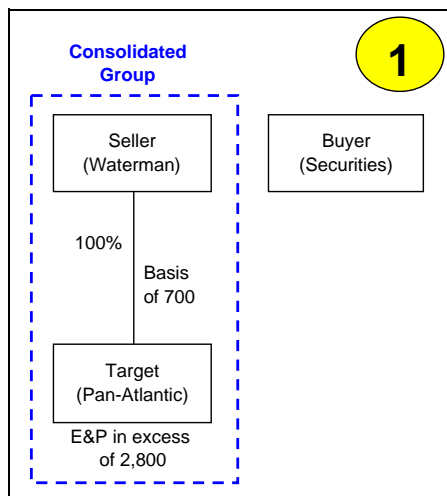
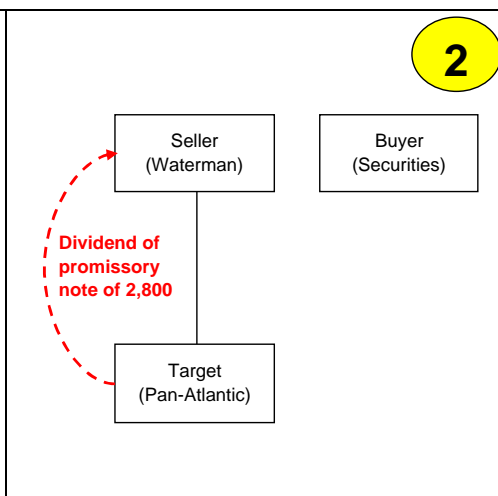


Pre-sale Distribution

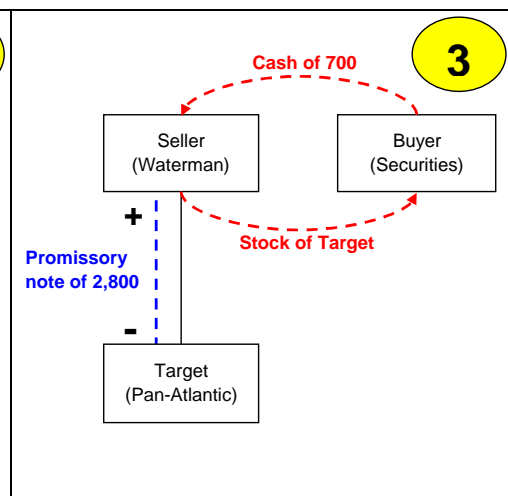
Initial Structure (before noon)



Div. of Promissory Note (12:00 noon)



Sale of Target to Buyer (1:00 p.m.)



Target was included in Seller's consolidated group. Therefore, the pre-sale dividend would have been eliminated. In addition, at the time of this distribution, Seller's basis in Target would have remained the same. Thus, the full amount of 3,500 would have been received tax free by Seller.

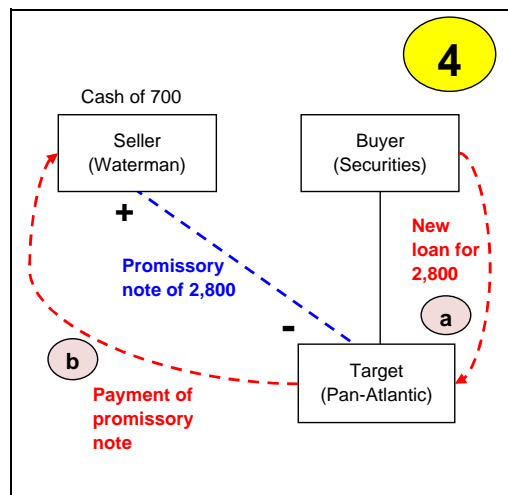
The Tax Court held that the distribution of 2,800 should be respected as a dividend. The Fifth Circuit reversed, holding that the 2,800 was part of the sales proceeds.

Three items to consider in pre-sale dividends:

1. Timing of the distribution in relation to the sale.
2. The source of funds for making the distribution (Target funds or Buyer funds)
3. The strength of the business purpose for making the distribution.

Compare TSN Liquidating, 624 F.2d 1328 (5th Cir. 1980) in which the Fifth Circuit held that a pre-sale dividend should be respected as a dividend.

Payment of Note (1:30 p.m.)



Ending Point

