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**From:** Halperin, Alan S <[REDACTED]>  
**Sent:** Wednesday, February 24, 2016 12:10 PM  
**To:** Jeffrey E.  
**Cc:** Bronstein, Richard J  
**Subject:** RE: Re:

But your example is not our facts. A partnership – AMH -- borrowed money and distributed the funds, giving rise to negative capital (and no current income tax). I thought that you were suggesting that AMH, the borrower, have its debt assumed or transferred. The lender is not making any transfer, as is the case in your most recent email. Again, Rick may have a view.

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From: Jeffrey E. [mailto:[jeevacation@gmail.com](mailto:jeevacation@gmail.com)]  
Sent: Wednesday, February 24, 2016 7:04 AM  
To: Halperin, Alan S <[REDACTED]>  
Subject: Re: Re:

if i owe you money and now i owe joe shmoe because he bought your note. i dont see any gain rec

On Wed, Feb 24, 2016 at 12:56 PM, Halperin, Alan S <[REDACTED]>>>  
wrote:

I suspect that UBTI would be calculated based on some reasonable approach. Perhaps one would take a fraction of the taxable income for the year. The numerator would be the number of days held by the charity and the denominator would be 365. But we would need to investigate further.

Under current TRA, Tufts gain gives rise to TRA rights only if the gain is triggered in connection with an exchange. Here, the Tufts gain would be triggered by the contribution to the DAF. Accordingly, under the current TRA, the resulting gain caused by the contribution would not give rise to any TRA payment.

I don't know about the "transfer" of the loan to another company. I suspect that any such assumption by another party would give rise to gain at that time.

I have copied Rick to get his reaction.

Alan

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From: Jeffrey E. [mailto:[jeevacation@gmail.com](mailto:jeevacation@gmail.com)] <mailto:[jeevacation@gmail.com](mailto:jeevacation@gmail.com)>

Sent: Wednesday, February 24, 2016 6:46 AM

To: Halperin, Alan S <[REDACTED]>>

Subject: Re: Re:

thanks re ubti, so that if the charity converted the units and sold the next day after receipt, how would it be calculated . approx what amount if done next week for ex. - 2 how does tufts gain impact TRA. not clear to me. re tufts gain, if the " loan " from agm was transferred to another co but kept the loan outstanding and that co was owned by family members for ex. wouldnt it keep the gain outstanding?

On Wed, Feb 24, 2016 at 12:39 PM, Halperin, Alan S <[REDACTED]>>  
wrote:

Is the tufts gain a per unit calculation?

I suspect that the answer is yes. The "Tufts gain" results from a constructive distribution that is attributable to a reduction in share of liabilities. The share of liabilities is proportional (based on units), so a reduction in share of liabilities that results from disposing of a number of units should be proportional to the number of units disposed of.

If the debt is are guaranteed, does the contribution still trigger gain?

The purpose of the guarantee would be to avoid a reduction in share of liabilities, so if it were done, it would presumably avoid triggering any Tufts gain. Remember that the guarantee is a viable strategy to defer gain only if all three founders participate in the guarantee and that the guarantee involves some economic risk.

What is the tax on ubti? For example if they donated this week and the charity promptly sold the shares, is the UBTI limited to income during the time it was held?

The UBTI on which the charity owes tax is limited to the income during the period that the charity owns the AOG units (and until the charity completes the exchange with the public company). Note that the donor advised fund may not accept property which generates UBTI.

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From: jeffrey E. [mailto:[jeevacation@gmail.com](mailto:jeevacation@gmail.com)<<mailto:jeevacation@gmail.com>>]

Sent: Tuesday, February 23, 2016 4:51 PM

To: Halperin, Alan S <[REDACTED]>>

Subject: Re: Re:

are the tufts gain are a per unit calculation? if they are guaranteed. does it still trigger? what is the tax, on ubti. for example if they donated this week and immediatley sold the shares . . is it trapped ubti, or only during the time it was held?

On Tue, Feb 23, 2016 at 9:20 PM, Halperin, Alan S <[REDACTED]>>

wrote:

Jeffrey, please let me respond to your questions.

Under the current documents, the principals cannot contribute the underlying AOG units to a donor advised fund. Assuming the relevant documents are modified to permit such a contribution, there is nothing inherit in the laws that govern donor advised funds which would prohibit such a contribution. However, such a contribution would trigger the

Tufts gain. Further, the donor advised fund would have taxable income, as the AOG units will give rise to UBTI. Under the current TRA, the Tufts gain, unless part of a fully taxable exchange, will not trigger any TRA payments.

Exchanges, as distinct from subsequent sales of the shares received in an exchange, are limited by various agreements, including the Agreement Among Principals and the Shareholders Agreement. Sales of shares, in turn, are limited by Rule 144. However, Rule 144 would not apply to shares sold by a donor advised fund.

Exchanges by Leon or BFP are reported on Form 4. Assuming charity is not an affiliate of Leon or AGM, there is no Exchange Act reporting applicable to an exchange by the charity. However, in the event that the charity owns 5% or more of the Class A shares, then there may be other reporting requirements (such as under Section 13(d) of the Exchange Act).

Alan

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From: jeffrey E. [mailto:jeevacation@gmail.com<mailto:jeevacation@gmail.com>]

Sent: Sunday, February 21, 2016 5:15 AM

To: Halperin, Alan S <[REDACTED]>>

Subject: Re:

can the units be contributed to a donor advised fund.? are the exchanges limited by a 144 volume restriction. . is there an sec filing requirement on exchange . sale or both?

On Sun, Feb 21, 2016 at 12:50 AM, Halperin, Alan S <[REDACTED]>>  
wrote:

Absent a tax-free exchange, the TRA is triggered at exchange. The units cannot be contributed to charity. Alan

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From: jeffrey E.

Sent: Saturday, February 20, 2016 4:32 PM

To: Halperin, Alan S

Subject: Re:

understood. when is the tra triggered normally, when exchanged or when sold? can the units be donated to charity or does it carry ubti

On Sat, Feb 20, 2016 at 11:56 PM, Halperin, Alan S <[REDACTED]>>  
wrote:

Before contribution to charity, a principal can exchange AOG units for AGM shares in a tax free exchange. After the contribution, charity can sell. Under current TRA, there is no TRA payments associated with the foregoing steps. Alan Alan S. Halperin | Partner Paul, Weiss, Rifkind, Wharton & Garrison LLP  
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From: Jeffrey E.

Sent: Saturday, February 20, 2016 3:48 PM

To: Halperin, Alan S

Subject: Re:

tax free exchange, is that the same as donating the stock to charity.. if the charity sells the stock , what happens to the step up

On Sat, Feb 20, 2016 at 11:25 PM, Halperin, Alan S <[REDACTED]>>

wrote:

Under TRA, no TRA rights are triggered in connection with a tax-free exchange. Alan

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From: Jeffrey E.

Sent: Saturday, February 20, 2016 2:04 PM

To: Halperin, Alan S

Subject:

what happened to rowens tra when he donated the shares in may of 14

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