



# Section 382 Analysis Services

M&A Tax  
Attribute Services Group



## Determining the Impact of Equity Transactions

Understanding the availability of U.S. tax attributes is vital for tax return and financial statement reporting. It is also a key component in determining deal value for both a buyer and a seller. In the current economic environment, it is critical to assess U.S. tax attribute limitations and loss limitations under section 382 and corresponding sections (e.g., sections 163(j), 383, 384).

Navigating the intricacies and nuances of section 382 requires specialized knowledge and experience, as well as access to all current updates and rulings. The KPMG M&A Tax Attribute Services Group excels in these areas.

We determine whether an ownership change under section 382 has occurred, and if it has, we determine the consequences of that change. Alternatively, if a corporation is contemplating a transaction that might result in an ownership change, we advise on potential approaches to increase the corporation's ability to use its tax attributes after that change.

**As former IRS and Treasury professionals, our specialists have been directly involved in writing and reviewing the Treasury regulations under section 382:**

Mark Hoffenberg, principal in charge—Washington National Tax-Corporate, wrote the final consolidated section 382 regulations. Mr. Hoffenberg received the first Private Letter Ruling (PLR) treating built-in Cancellation of Debt Income (COD) as reducing net unrealized built-in loss and allowing the application of 382(l)(5) and (6) to consolidated groups. He was the first adviser to obtain letter rulings on section 382(l)(3)(C), and developed a methodology which was cited and adopted by the IRS in Notice 2010-50. Mr. Hoffenberg participated in drafting the American Bar Association (ABA) comment letter on the recently issued Proposed 382 regulations addressing built-in income and deduction and has attended follow-up meetings with the IRS and Treasury to discuss his views on this project.

These rules apply to all the following U.S. tax attributes:

Net  
operating  
losses

Built-in  
losses

Section 163(j)  
carryforwards

General  
business  
credits

Minimum  
tax credits

Capital loss  
carryforwards

Foreign tax credits

KPMG has the following section 382 analysis credentials:



National network of dedicated section 382 advisers and study reviewers that help develop firm positions on topics such as poison pills, stock lending transactions, and relative fluctuations in value of different classes of stock



Valuation specialists that can assist with valuing a company's equity value as well as individual assets where there is an ownership change and built-in gain and loss calculations are required



State income tax section 382 specialists to assist with specific state section 382 consequences

## KPMG has market leading software to assist with our in-depth analysis

| 5% S/H Public Groups   | 1<br>06/30/2018<br>06/30/2018<br>Starting | Testing Period<br>First Testing Date<br>Current Testing Date |                            | 2<br>06/30/2018<br>12/31/2018     | Testing Period<br>Beginning of<br>Testing Period<br>Current Testing Date |                            | 3<br>06/30/2018<br>3/31/2019      | Testing Period<br>Beginning of<br>Testing Period<br>Current Testing Date |                            |
|------------------------|---|--|----------------------------|-----------------------------------|--|----------------------------|-----------------------------------|--|----------------------------|
|                        | Initial<br>Percent<br>Ownership           | Lowest<br>Percent<br>in Testing<br>Period                    | Positive<br>Owner<br>Shift | Test Date<br>Percent<br>Ownership | Lowest<br>Percent<br>in Testing<br>Period                                | Positive<br>Owner<br>Shift | Test Date<br>Percent<br>Ownership | Lowest<br>Percent<br>in Testing<br>Period                                | Positive<br>Owner<br>Shift |
| 1 Initial Public Group | 33.3333%                                  | 33.3333%   | 00.0000%                   | 36.5079%                          | 33.3333%   | 3.1746%                    | 36.5079%                          | 33.3333%   | 3.1746%                    |
| 2 Shareholder 1        | 20.8333%                                  | 20.8333%   | 00.0000%                   | 19.8413%                          | 19.8413%   | 0.0000%                    | 19.8413%                          | 19.8413%   | 0.0000%                    |
| 3 Shareholder 2        | 25.0000%                                  | 25.0000%   | 00.0000%                   | 23.8095%                          | 23.8095%   | 0.0000%                    | 11.9048%                          | 11.9048%   | 0.0000%                    |
| 4 Shareholder 3        | 20.8333%                                  | 20.8333%   | 00.0000%                   | 19.8413%                          | 19.8413%   | 0.0000%                    | 19.8413%                          | 19.8413%   | 0.0000%                    |
| 5 Shareholder 4        | 0.0000%                                   | 0.0000%  | 00.0000%                   | 0.0000%                           | 0.0000%  | 0.0000%                    | 11.9048%                          | 0.0000%  | 11.9048%                   |
| Total                  | 100.0000%                                 |  | 0.0000%                    | 100.0000%                         |  | 3.1746%                    | 100.0000%                         |  | 15.0794%                   |

### In addition, KPMG team members have contributed to the drafting and reviewing of significant Section 382 and related regulations:

- ▶ 1.382-2 (basic rules) Tom Wessel
- ▶ 1.382-6 (closing of the books) Tom Wessel
- ▶ 1.382-2T (ownership change determination) Tom Wessel
- ▶ 1.382-8 (controlled group rules) Tom Wessel
- ▶ 1.382-3 (5 percent shareholder) Tom Wessel
- ▶ 1.382-9 (section 382 in bankruptcy) Tom Wessel
- ▶ 1.382-4 (option attribution) Tom Wessel
- ▶ 1.1502-90 to -99 (consolidated section 382 rules) Mark Hoffenberg, Tom Wessel
- ▶ 1.382-5 (section 382 limitation) Tom Wessel

## Contact us

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