

Jeffrey,

Here is a strawman candidate for potentially dealing with the negative basis that the 3 principals have in their limited partnership interest in AMH (through their ownership of BRH and AP Professional). The strawman is a basis for further discussion and refinement. There is at least one variation that I am still working through, but it is based on the same fundamental features and designs as set forth in the strawman.

Strawman Plan

1. Each principal would form a wholly-owned SPV.
2. Each SPV would be funded with cash equity contributions from the principal and each SPV would borrow from one or more lenders an amount such that the total capital in the SPV would bear the same proportion of \$800m as the proportions in which the principals currently own BRH. The total capital of all the SPVs would be no less than \$800m. The proportion of total equity to borrowings will depend primarily upon non-tax factors. The SPV borrowing would be secured by the preferred interests in BRH discussed in paragraph 3, and could be guaranteed as to their respective SPV by the principals if necessary.

Tax Effects: Each SPV would be disregarded for federal income tax purposes. Thus, an SPV borrowing would be considered to be a borrowing by the owner of the SPV.

3. Each SPV would invest all of its capital in a new preferred class of equity of BRH, which BRH would invest in a new preferred class of equity of AP Professional, and which AP Professional would invest in a new preferred class of equity of AMH.
4. The preferred AMH equity interest (and each new preferred class of equity of BRH and AP Professional, so the terms of the preferred are mirrored up the chain) would have an aggregate liquidation preference of \$800m, would be limited in participation to a coupon that reflects a market rate of return and would not be exchangeable for equity of AGM. The coupon rate on the preferred would be no less than, and presumably would be greater than, the rate of interest on the SPVs' borrowings. Cash distributions on the preferred would be required to be made in the amounts and at the time that corresponds to payments required to be made by the SPVs on the borrowings. [On death of a principal, the preferred interests would be required to be redeemed at their then liquidation value.]

Tax Effects: the tax basis in the preferred interest at each level of investment would be equal to the cost of the preferred – in the aggregate at each level, \$800m. Allocations of taxable income on the preferred AMH interest would be allocated to AP Professional and then to BRH and then up the chain to the principals, but interest on the SPV borrowing should be deductible by the principals against such allocations.

5. AMH would use the \$800m to repay the outstanding balance of the debt held by the public.

Tax Effects: the repayment of the debt would result in a deemed distribution to AP Professional and then BRH and then the principals in respect of the common partnership interests in AMH (held through BRH and AP Professional). Since a taxpayer has a single partnership basis, and since the principals are considered to be the owners of the AMH common interests for federal income tax purposes, the deemed distribution would not exceed the tax basis the principals have in their AMH interests (indirectly) and thus should not give rise to taxable income to the principals. The tax basis that the principals have in BRH, and that BRH has in AP Professional, and that AP Professional has in AMH would be reduced by \$800m (so that the tax basis at each such level would be zero but would not be negative).

6. The SPVs/ BRH preferred interests would be held directly by the principals individually so that at death the value of the interests would be includible in their estates.

Tax Effects: at death, the tax basis in the preferred BRH interest would be stepped up to its fair market value (and, via a section 754 election made by each of BRH and AP Professional, a corresponding step up in tax basis would be obtained in the preferred interests held by such entities). As a result, no gain should be recognized by the estate on the redemption of the preferred interests. Since the [net] value of the preferred interests held by a decedent principal would be includible in the estate of the principal and thus subject to estate tax, appropriate consideration would need to be given to estate planning to eliminate any such estate tax, for example, a contribution of the “net” preferred interest (or cash received on redemption net of amounts used to repay debt) to a charity or a private foundation established by the principal either during his life or at death pursuant to his will.

Overall Effect

The overall effect of this plan should be the elimination of any Tufts gain [(including upon an interim exchange of AOG Units for AGM Class A Shares, except for any non-recourse debt remaining as a result of the intragroup-held AMH debt not repaid under this plan and allocable to AP Professional/BRH/principals)].

Issues to be considered further:

1. Ability of AMH to issue preferred interests under the plan – SEC and related considerations. (The deleveraging of AMH and issuance of the preferred effectively would leave AGM in the same relative position.)
2. Ability of AP Professional to issue preferred interests under the plan – impact on Contributing Partners of AP Professional. (The current position of the Contributing Partners should be unaffected other than to shift some portion of the remaining non-recourse debt of AMH held intragroup that is not repaid under this plan.)
3. Further review of impact of exchanges of AOG Units for AGM Class A interests -- a portion of the original AMH non-recourse debt that is held intergroup would be shifted to

AP Professional and hence BRH and the principals and would be recognized on an exchange.

4. Economic consequences of a loss of basis step up on an AOG Unit exchange for Tufts gain – comparative after-tax benefit of the additional TRA payment versus the permanent avoidance of tax on the Tufts gain.
5. Impact of the investment in the BRH preferred by the SPV/principals on “horizontal slice” considerations for gift tax purposes.
6. Calculation of the value of the preferred interests held by the SPV/principal for estate tax purposes – confirmation that the borrowing by the SPV reduces the value of the estate for estate tax purposes such that only the net value of the preferred interest is effectively subject to estate tax.
7. Impact on the tax effects if the preferred interests were treated as debt for federal income tax purposes (ala Castle Harbor decision).
8. Would the tax effects on basis/step up at death/estate tax considerations/non-tax considerations be the same if the SPV/principals acquired the AMH debt that is currently held by the public instead of investing in the preferred interests.