EXCEPTIONS TO THE APPLICATION OF THE ATTRIBUTION RULES:
FEW AND FAR BETWEEN

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A redemption of stock, Willens explains, will be treated as a payment in exchange for the stock if the shareholder sustains a sufficient reduction of her proportionate interest in the corporation. That determination, he notes, is complicated by the fact that one’s “ownership” of stock encompasses not only stock that the shareholder actually owns but, thanks to section 302(c), stock the shareholder constructively owns. While the “attribution” rules are quite comprehensive, some narrow exceptions to their application do exist. One question that has yet to conclusively resolve, according to the author, is whether there exists a hostility exception to the application of these attribution rules.

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Many tax determinations are predicated on a shareholder’s relative ownership of stock in a corporation. Perhaps the most prominent of those determinations is the question of whether a repurchase by the issuing corporation of all or a portion of a shareholder’s stock—a so-called redemption of that stock within the meaning of section 317(b) — qualifies as a sale or exchange or is treated instead as a distribution of property to which section 301 applies.

If the redemption constitutes a sale or exchange, the shareholder includes in gross income an amount equal to the excess of the amount received for his stock over the basis of the stock surrendered to the corporation. Moreover, if such an excess exists, the ensuing gain will be a capital gain and, if the surrendered stock had been held for more than one year, that capital gain will be long term in nature and therefore taxed at preferential rates. Noncorporate shareholders almost always prefer that their redemptions be eligible for sale or exchange treatment. If, however, the redemption does not qualify as a sale or exchange, it will instead be treated as a distribution. According to the author, the entire amount received from the corporation, undiminished by the basis of the surrendered stock, will be included in gross income and that amount, assuming it is paid “out of” the issuing corporation’s earnings and profits — either accumulated or of the same tax year — will be so included as dividend income. At least through the end of 2008, that dividend income can be “qualified dividend income” (within the meaning of section 1(h)(11)(B)) and therefore taxed as if it was a net capital gain.1 Accordingly, the historical advantage that sale or exchange treatment enjoyed vis-à-vis distribution treatment has been largely (but not entirely) eroded. Sale or exchange treatment is still preferable when the gain would be a long-term capital gain because the amount included in the redeemed shareholder’s gross income is smaller; it is reduced by the basis of the stock surrendered. If the redemption is a distribution, however, the entire amount received in exchange for the surrendered stock must be included in the recipient’s gross income, except in the unlikely event that the distribution is not “covered” by the issuing corporation’s earnings and profits. In that event, the “uncovered portion” of the distribution is characterized as a “return of capital” and is applied against, and reduces dollar for dollar, the basis of the stock regarding which the distribution is made.2

For corporate shareholders, however, distribution treatment for their redemptions may well be preferable because of the intercorporate dividends received deduction

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1Qualified dividend income encompasses dividends received during the tax year from either a domestic corporation or a “qualified foreign corporation,” but only if the stock for which the dividend is paid is held for more than 60 days of the 121-day period that commences 60 days before the ex-date regarding the dividend. For that purpose, the rules of section 246(c) are incorporated so that holding period “credit” toward the more-than-60-day holding period requirement will not be earned for days on which the taxpayer, in specified ways, has diminished his risk of loss from holding the stock.

2See section 301(c)(2) (when this “return of capital” distribution exceeds the basis of the stock for which the distribution is made, the excess is treated as “gain from the sale or exchange of property”). See section 301(c)(3).
(DRD). Under section 243(a)(1), assuming holding period requirements are met, 70 percent of the dividends received from a domestic corporation may be deducted.1 When the redeemed shareholder is a corporation, and has a comparatively low basis in the stock of the redeeming corporation, it is almost always advantageous to ensure that the redemption is a distribution (because of the DRD) and, as the legendary Seagram/DuPont transaction attests, corporate shareholders will sometimes go to extraordinary lengths to ensure that the redemption is treated as a distribution.2

Sale or Exchange vs. Distribution

Section 302(a) provides that a redemption will be treated as a distribution in part or full payment in exchange for the stock if the redemption satisfies any of the tests in section 302(b). If it does not, section 302(d) takes hold and provides that the redemption will be treated as a distribution of property to which section 301 applies; the redemption, in those cases, is a dividend to the extent it is paid out of earnings and profits.

A redemption is eligible for sale or exchange treatment if it “resembles” a sale; it will do so if the redeemed shareholder sustains, as a result of the redemption and any other transactions that are, along with the redemption, part of an “integrated plan” to reduce the shareholder’s interest in the corporation (see Rev. Rul. 75-447, 1975-2 C.B. 113), a “sufficient” reduction of her proportionate interest in the corporation. Sufficiency is a function of the guidelines set forth in section 302(b). Thus, section 302(b)(2) treats a “substantially disproportionate” redemption as a sale. To qualify under section 302(b)(2), the redeemed shareholder, immediately after the redemption, must own less than 50 percent of the total combined voting power of all classes of stock entitled to vote and his percentage ownership of both voting stock and common stock, immediately after the redemption, must be less than 80 percent of the percentage of that stock owned immediately before the redemption.3 Section 302(b)(3) provides that a redemption will be treated as a sale if it is in complete redemption of all of the stock owned by the shareholder. Moreover, when the family attribution rules would conspire to prevent a “clean termination” of the shareholder’s proprietary interest, those rules may be waived if the redeemed shareholder (i) retains no interest in the corporation, including an interest as an officer, director, or employee, other than an interest as a creditor, (ii) does not acquire any such interest within 10 years from the date of the redemption, other than stock acquired by bequest or inheritance, and (iii) agrees to notify, through the filing of a so-called triple-eye agreement, the IRS of the acquisition of a prohibited interest within that 10-year period. Finally, section 302(b)(1) provides that a redemption will be treated as a sale if it is “not essentially equivalent to a dividend.” That inquiry is devoted solely to the question of whether the transaction may be characterized as a sale: The effect of the transaction, rather than its motivation, is decisive and section 302(b)(1) requires that the redemption result in a “meaningful reduction” of the shareholder’s proportionate interest in the corporation.4

The ‘Constructive Ownership’ Rules

In determining whether a redemption qualifies as a sale or exchange, which depends on whether the shareholder suffers a sufficient (as defined in section 302(b)) reduction of her proportionate interest in the corporation, the constructive ownership or attribution rules must be taken into account. Those rules operate on the generally sound premise that persons bearing specified relationships, either familial or economic, to one another will act in concert. Section 318 provides that for purposes of the provisions set forth in section 318(b) to which the rules are expressly made applicable — and section 302(c)(1) provides that those rules shall apply for purposes of determining (in evaluating a redemption’s claim to sale or exchange treatment) the ownership of stock — an individual shall be considered owning the stock owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), children and grandchildren, and parents. For that purpose, moreover, a legally adopted child is regarded as a child “by blood.” See section 318(a)(1)(B). There is no attribution between siblings. Further, under section 318(a)(2)(A), stock owned, directly or indirectly, by or for a partnership or estate will be considered as owned proportionately by its partners or beneficiaries, respectively. No guidance has ever been offered on the question of how a partner’s proportionate interest is to be measured. What if the partner’s capital interest differs from his profits

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1Section 246(c) denies the DRD if the stock on which the dividend is paid is not held at the risk of the market for more than 45 days of the 91-day period that begins on the date that is 45 days before the ex-date for the dividend.

2In this 1995 transaction, Seagram received, in addition to $8.3 billion, warrants to purchase the same number of DuPont shares it had surrendered in the redemption. Accordingly, because of the application of the option attribution rules, Seagram took the position that the redemption did not reduce its proportionate interest in DuPont and therefore that redemption was properly treated as a distribution eligible — because DuPont was, with respect to Seagram, a so-called 20 percent owned corporation within the meaning of section 243(c) — for an 80 percent DRD. Moreover, although the dividend was most certainly an extraordinary one, the amount by which the DRD exceeded the basis of the stock on which the dividend was paid was not required to be included in gross income. That latter loophole was quickly remedied. See section 1059(a)(2) and section 1059(h)(1)(A)(iii)(I).

3If there is more than one class of common stock outstanding, the determinations are to be made by reference to fair market value. See Rev. Rul. 87-88, 1987-1 C.B. 81.

4The receipt through a will of the right-to-vote stock contained in an estate (because the shareholder was appointed the executor of the estate) is the receipt of a lesser interest than that permitted by the “parenthetical phrase.” That lesser interest, although not technically covered by the parenthetical phrase, because an executor does not acquire her interest by “bequest or inheritance,” is nonetheless viewed as coming within it. See Rev. Ruls. 72-380, 1972-2 C.B. 201, and 79-334, 1979-2 C.B. 127.

interest in the partnership? In those cases, we are in the dark regarding the question of which metric is determinative for that partner’s proportionate interest. In the case of a beneficiary of an estate, however, the question of proportionate interest has been authoritatively addressed. A beneficiary’s proportionate interest is to be measured by her proportionate share of the estate’s remaining assets at the time of the redemption. A beneficiary’s proportionate interest will therefore fluctuate as partial distributions from the estate are made, and will not remain fixed in accordance with the terms of the decedent’s will. See Rev. Rul. 58-111, 1958-1 C.B. 173.

Stock owned, directly or indirectly, by or for a trust (other than a tax-exempt employees’ trust described in section 401(a)) will be considered as owned by its beneficiaries in proportion to their actuarial interests in the trust, and if 50 percent or more (in value) of the stock of a corporation is owned, directly or indirectly, by or for any person, that person shall be considered owning the stock owned, directly or indirectly, by or for the corporation, in the proportion that the value of the stock the person owns bears to the value of all of the corporation’s outstanding stock.

‘Back’ Attribution
Ownership of stock is also attributed from a “member” of an entity to the entity where the latter’s redemption is being evaluated. Thus, under section 318(a)(3)(A), stock owned, directly or indirectly, by or for a partner or beneficiary, of a partnership or estate, will be considered owned by the partnership or estate. Here, the stock owned by the member is attributed in full to the entity; it is not merely attributed in proportion to the member’s beneficial interest in the entity. Similarly, stock owned, directly or indirectly, by or for a beneficiary of a trust will be considered as owned by the trust unless the beneficiary’s interest in the trust is properly characterized as a “remote, contingent interest.” An interest is contingent when it is conditioned on survivorship (that is, one’s interest in the trust will terminate if he does not survive the life tenant of the trust) and such a contingent interest is remote if, assuming the maximum exercise of discretion by the trustee in favor of the beneficiary, the value of the interest is 5 percent or less of the value of the total trust property. See Rev. Rul. 76-213, 1976-1 C.B. 92. Further, when at least 50 percent of the value of the stock in a corporation is owned, directly or indirectly, by or for any person, the corporation will be considered owning (all) of the stock owned, directly or indirectly, by or for that person.

‘Option’ Attribution
Finally, section 318(a)(4) provides that if any person has an option to acquire stock, that stock will be considered as owned by the person. An option is an instrument that provides its holder with the right to obtain stock “at his election.” Thus, warrants and convertible securities that convey that unfettered right are classified as options. See Rev. Rul. 68-601, 1968-2 C.B. 124. Of necessity, therefore, contingencies that remove the election from the holder’s “unilateral control” will prevent attribution. However, it has been held that the “mere passage of time” is not such a contingency so that an option exercisable only after the lapse of a fixed period of time is subject to attribution. See Rev. Rul. 89-64, 1989-1 C.B. 91. Moreover, continued employment, in the case of a compensatory option, is not a contingency so that, as far as the IRS is concerned, the holder of the instrument owns the underlying stock even though the option has not yet become vested. See LTR 8936016 (June 8, 1989). Do options on unissued stock increase the total number of shares outstanding? The IRS says no. It takes the position that the option attribution rules can be applied only to increase the stock ownership of the redeemed shareholder. However, several courts have disagreed with the IRS on that point.8 The plain language of the statute seems to support that view. If any person has an option to acquire stock, that stock will be considered owned by that person. That directive does not appear to embody the type of exception the IRS has fashioned. The option attribution rules may apply only to increase the total number of shares outstanding when the option is held by the redeemed shareholder or by a person whose stock that redeemed shareholder would indirectly own.

Example 1: Corp. X has 100 shares outstanding, owned in equal portions by a father and his daughter. Corp. X has granted an option to a key employee, Mr. A, to purchase 100 shares of Corp. X’s stock. The option can be exercised by Mr. A only after he completes five years of satisfactory service with Corp. X. Corp. X redeems 40 of the father’s 50 shares. If Mr. A’s option can be employed to increase the total number of shares outstanding, the father’s preredemption proportionate interest in Corp. X is 50 percent (he owns actually and constructively 100 of the 200 outstanding shares) and his postredemption proportionate interest has declined to 37.5 percent (60 out of 160 shares). That reduction in interest is sufficient to bring the redemption within the safety of section 302(b)(2). His postredemption proportionate interest is less than 80 percent of his preredemption interest. However, if the IRS’s position—that options on unissued stock held by persons unrelated to the redeemed shareholder do not increase the total number of shares outstanding—is the correct one, the father’s redemption is a distribution because he owns 100 percent of Corp. X’s outstanding stock both before and after the redemption and a redemption from a sole shareholder is always equivalent to a dividend. See Reg. section 1.302-2(b).

Attrition Rules Exceptions and Other Anomalies
Although, in general, stock that is constructively owned is considered to have, under section 318(a)(5)(A), the same status as stock that is actually owned, there are exceptions to the inexorable application of the attribution rules. Stock constructively owned by an individual, by reason of the application of section 318(a)(1)’s family attribution rules, will not be considered as owned, for

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purposes of again applying section 318(a)(1), to make another person the constructive owner of that stock. See section 318(a)(5)(B).

Example 2: A father, mother, daughter, and her husband each own 20 of Corp. Y’s 80 shares of outstanding voting common stock. Fifteen of the husband’s shares are redeemed. Although the father’s stock and the mother’s stock are attributed to the daughter, her husband cannot be considered the owner of that attributed stock. Under section 318(a)(5)(B), the daughter is not considered to own her father’s nor her mother’s stock for purposes of making her husband the constructive owner of that stock. Thus, before the redemption, the husband owns 50 percent of the corporation’s outstanding stock; after the redemption, his interest has declined to 38 percent. The redemption is an exchange under section 302(b)(2) because the husband’s percentage ownership of both voting stock and common stock, immediately after the redemption, is less than 80 percent of his percentage ownership before the redemption.

Example 3: The facts are the same as in Example 2 except that the daughter has an option to acquire her father’s and mother’s stock. In this case, the husband is deemed to be the owner of his father-in-law’s and mother-in-law’s shares — by attribution through his wife — because there is a prohibition only against “double family attribution” and no such prohibition exists when the first link in the chain of attribution is by reason of option attribution. Option attribution, in these cases, takes precedence over family attribution. The statute provides that if, as here, stock may be constructively owned by an individual under both section 318(a)(1) and section 318(a)(4), it shall be considered as owned by him only under section 318(a)(4). See section 318(a)(5)(D). The husband is therefore a “sole shareholder” both before and after the redemption of his stock, and a redemption from a sole shareholder of a portion of his stock is always equivalent to a dividend.

Also, so-called sidewise attribution has been banned since 1964. Under section 318(a)(5)(C), stock constructively owned by an entity (a partnership, estate, trust, or corporation) by reason of the application of section 318(a)(3), the “back attribution” rules, will not be considered as owned (by that entity) for the purpose of applying section 318(a)(2) to make another member of the entity the constructive owner of that stock.

Example 4: Mr. A and Ms. B are the sole (and equal) partners in a law partnership. Mr. A owns 99 shares and Ms. B owns 1 share of Corp. Z’s 100 shares of outstanding stock. Corp. Z redeems the one share held by Ms. B. Were it not for section 318(a)(5)(C)’s prohibition on sidewise attribution, Ms. B, before the redemption, would be deemed to own 50.5 percent of Corp. Z’s outstanding stock (one share directly and 50 percent of the 99 shares of Corp. Z stock owned constructively by the partnership). After the redemption, her interest would have declined only marginally to 50 percent. It is unlikely that such a reduction of proportionate interest would be, within the meaning of the Davis case, a “meaningful” one. However, because of the ban on sidewise attribution, the partnership is not considered to own, under section 318(a)(3)(A), the stock owned by Mr. A for the purpose of making Ms. B the constructive owner of that stock. Thus, the redemption of the one share she actually owns constitutes a complete termination of her interest in the corporation and the redemption qualifies as a sale or exchange under section 302(b)(3). If, however, the law partnership possessed an option to purchase Mr. A’s stock, the prohibition against double attribution to an entity from a member and then from the entity to another member would not operate. That ban operates only when the first link in the attribution chain is back attribution. When, as here, it is option attribution, of the type set forth in section 318(a)(4), that stock will be reattributed to other members of the entity in proportion to their beneficial interests in the entity. In that case, Ms. B’s reduction of ownership from 50.5 percent to 50 percent would likely result in the necessity of treating the redemption of her one share as a distribution.

However, because a corporation does not acquire rights as a shareholder, when it acquires its own stock through the exercise of an option, it will not be considered, under section 318(a)(4), the owner of the stock it has an option to acquire for the purpose of making another shareholder the constructive owner of the stock. See Rev. Rul. 69-562, 1969-2 C.B. at 47. Thus, the IRS has administratively instituted a ban on another form of sidewise attribution. Stock constructively owned by a corporation, by reason of section 318(a)(4), when the option pertains to the issuer’s own stock, will not be considered as owned by the corporation for the purpose of applying section 318(a)(2) to make another shareholder who owns, directly or indirectly, at least 50 percent of the value of the issuer’s stock the constructive owner of that stock.

Example 5: Corp. B has 100 shares outstanding. Mr. A owns 50 shares and unrelated Mr. B and Ms. C each own 25 shares. Corp. B has an option to purchase Mr. B’s shares. Mr. A owns only 50 percent of Corp. B’s outstanding stock. The stock owned by Mr. B, which Corp. B has an option to acquire, is not treated as owned by Corp. B for the purpose of making Mr. A the constructive owner, under section 318(a)(2)(C), of 12.5 of those shares.

Reg. section 1.318-1(b) provides, rather elliptically, that in applying section 318(a) to determine the stock ownership of any person for any one purpose, a corporation will not be considered to own its own stock by reason of section 318(a)(3)(C). We now know that this inscrutable rule is designed to encompass: Section 318(a)(3)(C) should not be applied so that a corporation owns the stock of another corporation that stands between itself and the shareholders “through whom the attribution link is made.” See GCM 35414 (July 25, 1973).

9Compare Rev. Rul. 76-385, 1976-2 C.B. 92 (any reduction of proportionate interest is a meaningful reduction, but only if the redeemed shareholder is a “small, minority shareholder” whose relative stock interest is “minimal” and who exercises no control over the affairs of the corporation).

10See reg. section 1.318-4(c).
Example 6: Corp. X owns 100 percent of the stock of Corp. Y and Corp. Z. Corp. Y owns 100 percent of the stock of Corp. Z, and in turn, owns 100 percent of the stock of Corp. S, which it sells to Corp. Y for an amount of money equal to the value of Corp. S’s stock. If Corp. Z, which actually owns 100 percent of the stock of Corp. S, constructively owns 100 percent of the stock of Corp. Y, the sale will be treated, under section 304(a)(1), as a distribution to Corp. Z in redemption of stock of the acquiring corporation, Corp. Y. It appears, at first blush, that Corp. Z owns 100 percent of the stock of Corp. Y. Under section 318(a)(2)(C), Corp. X owns 100 percent of the stock of Corp. Z and, therefore, under section 318(a)(3)(C), Corp. Z owns the stock that Corp. X owns, which includes the stock of Corp. Y. That application of the attribution rules would result in the transaction being within the terms of section 304. However, reg. section 1.318-1(b), which provides that a corporation is not to be considered owning its own stock by reason of section 318(a)(3)(C), is applicable to the constructive ownership of Corp. Y by Corp. Z under section 318(a)(3)(C) because, by reason of that application of section 318(a)(3)(C), section 318(a)(5)(A) and section 318(a)(2)(C) would apply to make Corp. Z the owner of its own stock. Thus, Corp. Z is not the owner of Corp. Y’s stock and the sale is not governed by section 304. In short, although Corp. Z owns the stock owned by Corp. X, this application of the attribution rules does not extend to the stock of Corp. Y, a corporation in the “same chain of ownership” as Corp. Z. See Rev. Rul. 74-605, 1974-2 C.B. 97. Quite clearly, Corp. Z constructively owns the stock of any other subsidiary of Corp. X. The only subsidiary whose stock it does not constructively own is the stock of its immediate parent — the corporation that stands between itself and the shareholder (Corp. X) through whom the attribution link is made. See Rev. Rul. 70-496, 1970-2 C.B. 74.

What About ‘Family Hostility’?

The attribution rules are premised on the reasonable assumption that persons bearing specified relationships to one another will act monolithically, so the stock actually owned by each person should be considered owned by other persons for whom the specified relationship exists. What if the actual relationship between the parties is “hostile” such that it belies the “community of interest rationale” on which the attribution rules are predicated? In Robin Haft Trust v. Commissioner, 510 F.2d 43 (1st Cir. 1975), stock owned by several trusts was redeemed. The beneficiary of each trust was a child of the corporation’s principal shareholder but the relationship between that principal shareholder and his children was, at best, “strained.” The parents of each trust’s beneficiary had gone through a “bitter divorce” and an “acrimonious property settlement” and the father had virtually no contact with his children since the divorce. Under no circumstances would those parties (otherwise described in section 318(a)(1)) act in concert.

After applying the attribution rules, however, the redeemed trusts each experienced an increase in their proportionate interest in the corporation. Before the redemption each trust owned, actually and constructively, 31 percent of the corporation’s outstanding stock and postredemption, because of the vagaries of the attribution rules, each trust’s proportionate interest had increased to 33 percent. The Tax Court found that each trust’s redemption, in light of the fact that there had been no reduction whatsoever in its proportionate interest, was a distribution. However, the First Circuit Court of Appeals reversed the Tax Court’s decision and remanded the case to that tribunal for further proceedings. Section 302(b)(1), in the court’s estimation, was potentially applicable: In enacting section 302(b)(1), Congress indicated that the inquiry regarding whether a redemption is or is not essentially equivalent to a dividend should be devoted solely to the question of whether the transaction may be characterized as a sale. It is the effect of the transaction, rather than its motivation, that is determinative and, according to Davis, section 302(b)(1) requires a “meaningful reduction” of the shareholder’s proportionate interest in the corporation. The court believed that this language certainly seems to permit, if not mandate, an examination of the facts and circumstances surrounding a case to determine the effect of the redemption, “transcending a mere mechanical application of the attribution rules.” No other court, however, faced with this question, has indicated a willingness to actually scrutinize the tenor of the relationships existing between parties described in the attribution rules and, in effect, cut off their application when the facts of the case belie the community of interest rationale on which the rules are premised.

The IRS will not follow the Haft court’s lead. In Rev. Rul. 80-26, 1980-1 C.B. 66, it concluded that the facts of a case, including genuine hostility, can never contradict the (purely) mechanical determination, under section 318(a), of how much stock a shareholder owns. In Haft, the ruling says, the court viewed the rules as simply a “presumption of continuing influence” and, because of the palpable hostility existing there, disregarded the attribution rules in testing the redemption for dividend equivalence. That interpretation, however, the ruling states, is patently contrary to both the legislative history of section 318(a) and the language (“the attribution rules apply for purposes of section 302(b)(1)”) and rationale of Davis. However, on closer inspection, we find that the court did not eschew the application of the attribution rules. It agreed that the rules had to be taken into account but concluded that the rules, while being “taken into account,” should not be determinative. At the end of the day, the court said, the overriding criterion regarding the application of section 302(b) is whether there has been,

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12See David Metzger Trust v. Commissioner, 693 F.2d 459 (5th Cir. 1982), and David L. Miller v. Commissioner, 75 T.C. 182 (1980). Ironically, the Haft trusts could now obtain exchange treatment for their redemptions by executing valid waivers of attribution from the estranged father to his children under the authority of section 302(c)(2)(C). For such a waiver to be available, both the trust and each “related person” must meet the requirements set forth in section 302(c)(2)(A) for a valid waiver, and each related person must agree to be jointly and severally liable for any tax deficiency that would arise from the failure of the entity to refrain from reacquiring, within the 10-year look-forward period, a prohibited interest in the corporation.
based on an analysis of the facts and circumstances, a significant modification of the shareholder’s interest. Quite clearly, the actual relationship between the parties who are presumed to act in concert is a factor that bears on the question whether there has been the requisite modification of the shareholder’s interest. That is consistent with the congressional desire to retain the “not essentially equivalent to a dividend” test when the 1954 code was enacted, and with the notion that the section 302(b)(1) inquiry is devoted solely to whether the transaction, once all of the facts and circumstances are judiciously weighed, may be properly characterized as a sale.

In any event, outside the aegis of the First Circuit Court of Appeals, it will be difficult, if not impossible, to avoid the attribution rules. When a mechanical application of those rules results in an insufficient reduction of the redeemed shareholder’s proportionate interest in the corporation, it can be expected that the redemption will be treated as a distribution even though, in reality, regarding the redeemed shareholder, because of the state of his relationships with the other shareholders with whom section 318 presumes the redeemed shareholder has an affinity, the redemption has given rise to a profound and demonstrable shift in the ownership and control of the corporation.