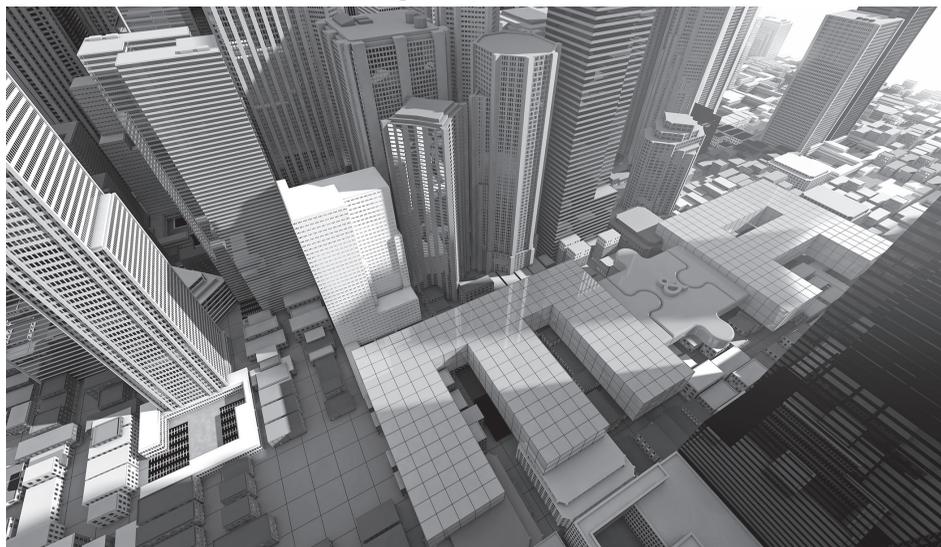


## BANKING/ FINANCE

# M&A World Roiled by 15% Corporate Tax Threatening Split-Offs



SHUTTERSTOCK

Split-offs are where a publicly listed parent company hives off a unit and stockholders then choose whether to own shares in either the parent or the new company.

by Laura Davison

Corporate dealmakers have a new complication to consider starting next year, with the introduction of a minimum tax that's set to affect a type of divestiture that up to now has gone untaxed.

Some split-offs, where a publicly listed parent company hives off a unit and stockholders then choose whether to own shares in either the parent or the new company, are set to be affected by the new 15% corporate "book tax."

Split-offs can generate earnings for the parent on its financial statements, which from 2023 will be subject to the new 15% minimum levy, when it comes to companies with at least \$1 billion of profits reported to shareholders. Financial-accounting figures weren't previously used for determining corporate-tax liabilities.

"The transaction that you thought was tax-free might be taxable," Jodi J. Schwartz, a partner at Wachtell, Lipton, Rosen & Katz, said. "If you have zero taxable income and then you have a split-off, you would still have zero taxable income, but you would have all this book income and be subject to the IRA's minimum tax," she said.

The IRA refers to the Inflation Reduction Act, which included the 15% minimum book tax to help pay for the package's climate spending and deficit reduction.

Under the legislation, companies will calculate their taxes using traditional tax rules and the regular 21% corporate rate, and again using the 15% minimum book tax, and then pay whichever amount is greater.

Tax professionals have criticized the levy as unfair, because it creates different outcomes for very similar transactions. Split-offs will get caught up in the minimum tax, whereas spinoffs, a more commonly used transaction, are less likely to have adverse tax consequences.

Spinoffs are where a parent company distributes shares of a new subsidiary to existing shareholders.

Accounting firm EY has asked the Treasury Department for more lenient regulations to preserve some split-offs. "Fundamentally, a 'split-off,' just like a 'spin-off,' was viewed by Congress as a tax-free corporate reorganization that generally should not be a taxable event," the letter said.

The Treasury Department said in a statement that the IRA's minimum tax

will ensure that large, profitable companies don't avoid paying federal taxes.

"As Treasury works to implement these important provisions in the coming weeks and months, we welcome input from stakeholders and will continue to engage with them in this process," the statement said.

Both spinoffs and split-offs are regulated by the same section of the Internal Revenue Service's code for tax-free corporate restructuring. But split-offs under generally accepted accounting principles can record financial-statement earnings.

"The idea that these types of transactions that are essentially the same would get completely different accounting treatment and therefore now tax treatment is ludicrous," Andrew Silverman, a Bloomberg Intelligence tax policy analyst, said.

Both moves have become popular tools in recent years for corporations looking to divvy up the business to increase value for shareholders. Firms don't usually make the decision about which strategy to use until they near the close of the deal. Both types are highly technical and have been subject to several metrics to qualify as tax-free.

"Not only will it dampen enthusiasm for split-offs it may almost eliminate it as a viable technique," Robert Willens, an independent tax consultant based in New York, said.

Willens pointed to a split-off from 3M Co. of its food-safety business that closed recently as an example of a transaction that would be much less likely once the minimum tax goes into effect. The company will report a boost in book income as a result. That kind of deal from next year will likely mean a much bigger tax bill.

Observers have differing takes on whether the Treasury will create a carve-out to preserve the tax-free treatment of split-offs.

Schwartz said that the issue is "very, very ripe" for fixing. But Willens was less optimistic, saying he wasn't confident the Treasury would address the issue.

Corporate minimum taxes have long been a challenge for the Treasury to wrestle with. Congress imposed the Business Untaxed Reported Profits, or the BURP, in 1987 but repealed it three years later. John Wilkins, a Treasury official at the time, told Congress that the tax might have harmed the quality of financial income reporting.

**Laura Davison reports for Bloomberg News.**



## CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **September 28, 2022 beginning at 6:00 PM** to consider an amendment to the City's Land Development Code, Chapter 77, "Roads and Vehicular Use Areas," to update single-family residential driveway regulations. The City Council will consider this item for **FIRST READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

**ORDINANCE No. 2022-21**

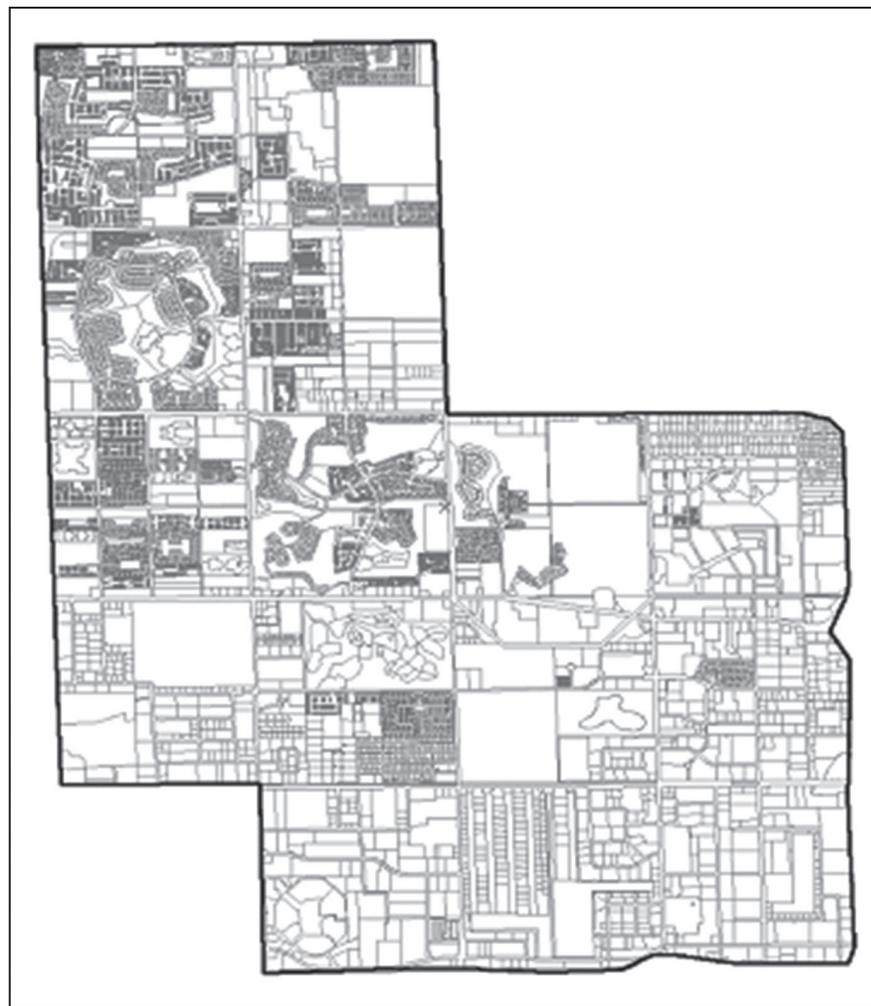
**AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A TEXT AMENDMENT TO THE CITY OF DORAL LAND DEVELOPMENT CODE, CHAPTER 77, "ROADS AND VEHICULAR AREAS," ARTICLE III, "ACCESS CONTROL," DIVISION 1, "GENERALLY," SECTION 77-85, "SINGLE-FAMILY AND DUPLEX DRIVES," TO UPDATE SINGLE-FAMILY RESIDENTIAL DRIVEWAY REGULATIONS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE**

**HEARING NO.:** 22-09-DOR-09

**APPLICANT:** City of Doral

**REQUEST:** The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve an amendment to the City's Land Development Code modifying Chapter 77, "Roads and Vehicular Use Areas," to update single-family residential driveway regulations.

**Location Map**



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC  
City Clerk  
City of Doral