

Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations & Restructurings 2022

Chicago, Skadden, Arps, Slate, Meagher & Flom LLP and Live Webcast, November 16-18, 2022

Agenda Day One: 8:15 a.m. - 5:15 p.m.

8:15

Opening Remarks

William D. Alexander, Eric Solomon

8:30

OVERVIEW AND STRATEGIES IN REPRESENTING SELLERS

Effects of the 2012 Act, the 2017 Tax Act, and 2021 and 2022 legislative proposals on stock sale/asset sale strategies; effects of rate changes, reclassifications, 2017 Tax Act provisions, and 2021 legislative proposals on deal structurings; shareholder-level structurings – Boston Scientific/Guidant; VNU/IMS and Whirlpool/Maytag versus P&G/Gillette; Burger King/Tim Hortons; SBC/AT&T and Verizon/MCI; asset-level structurings – effects of General Utilities repeal; Petrie Stores/Toys “R” Us and its aftermath; IMS Health/Gartner; sponsored leveraged spin-offs; evolving post-2017 Tax Act structurings; evolution of Section 351 – National Starch/Unilever, Nestle/Dreyer’s, BlackRock/Merrill, NewsCorp/Dow and Northrop/Litton; combined sale/redemption, recapitalization and other techniques; monetization techniques; contingent payments, convertibles, putables, exchangeables and open transaction treatment; New IRS rule and no-rule policies and Business Plan topics

Suresh T. Advani

9:45

SELECTED SELLER AND BUYER ISSUES, INCLUDING NEGOTIATING AND DRAFTING TAX PROVISIONS IN ACQUISITION AGREEMENTS

Key risk allocation issues; negotiating and drafting provisions in acquisition agreements; indemnification issues; target’s tax elections; reporting requirements; representation and warranty insurance; the impact of recent legislation on the terms of the agreement and the negotiation process

Suresh T. Advani, Diana S. Doyle, Philip B. Wright

11:00

Networking Break

11:15

STRUCTURING LEVERAGED BUYOUTS

Stepped-up asset basis vs. carryover basis for buyer and single versus double taxation for seller in the context of a taxable asset purchase, stock purchase (with and without Section 338(h)(10) election or Section 336(e) election), or merger; leveraged recapitalizations and other forms of partial or complete exit; multi-layer debt and equity financing structures; interest deductibility (including debt/equity characterization, Section 279, Section 163(e)(5), Section 163(l), Section 163(j), and OID); preferred stock and accrual of dividends thereon; warrants and convertibles

Lee Morlock, Jodi J. Schwartz

12:15

Lunch

Attendees will help themselves to a picnic lunch and then take their seats in the meeting room

Afternoon Session:

12:45

CURRENT ISSUES IN DIVISIVE STRATEGIES – SPIN-OFFS

Tax-free spin-offs, split-offs and split-ups under Section 355; analysis of issues in innovative divisive transactions; developing IRS/Treasury views on no-rule policy; changes in administrative practice; evolving techniques for leveraged distributions; unresolved interpretive issues under Sections 355(d) and (e); cash-rich split-offs; restructuring issues for spin-offs; issues and techniques arising from the enactment of the 2017 Tax Act

William D. Alexander, Joseph M. Pari, Thomas F. Wessel, Brett York (Invited) [Deputy Tax Legislative Counsel, Office of Tax Legislative Counsel, Department of the Treasury], Mark Weiss (Invited) [Branch Chief, Office of the Chief Counsel (Corporate), Branch 2, Internal Revenue Service]

1:45

CURRENT ISSUES IN M&A

Emerging issues and current trends in M&A transactions, including SPACs, with an additional focus on continuing issues associated with the 2017 Tax Act and new developments under the Biden Administration

James R. Barry, Jasper L. Cummings, Jr., Rachel L. Cantor, Brett York (Invited) [Deputy Tax Legislative Counsel, Office of Tax Legislative Counsel, Department of the Treasury], Jeremy N. Aron-Dine (Invited) [Attorney, Office of the Associate Chief Counsel (Corporate), Branch 3, Internal Revenue Service]

2:45

Networking Break

3:00

TAXABLE TRANSACTION PLANNING

Impact of new provisions in the 2017 Tax Act when assessing the relative merits of taxable transactions versus tax-free reorganizations and spin-offs, and whether to sell stock versus assets; tax planning for sales of controlled foreign corporations, including the effects of new Sections 245A, 951A, and 250; common issues and planning alternatives

Nicole P. Field, Mark R. Hoffenberg, Lisa M. Zarlenga, Mark Weiss (Invited) [Branch Chief, Office of the Chief Counsel (Corporate), Branch 2, Internal Revenue Service]

4:15

PARTNERHIP ALTERNATIVES TO CORPORATE M&A

Use of partnerships and other passthrough entities in a joint venture or as the acquiring entity; publicly traded partnerships; mixing bowl partnerships; leveraged partnerships; treatment of Section 197 intangibles in a partnership context; imaginative uses of the check-the-box regulations; single-member LLCs; effects of 2017 Tax Act, including carried interest and Section 163(j) changes

Pamela Lawrence Endreny, Phillip Gall

5:15

Adjourn

AGENDA DAY TWO: 8:30 A.M. - 5:30 P.M.

Morning Session:

8:30

CORPORATE TRANSACTIONS OPEN DISCUSSION

Participate in a discussion of audience-selected corporate issues and transactions

William D. Alexander, Jasper L. Cummings, Jr.

9:15

INTERESTING CORPORATE TRANSACTIONS OF THE PAST YEAR

A review and critique of recent M&A transactions, including the impact of recent legislative changes, related regulatory guidance and potential future tax law changes on acquisition trends and structures

Andrew M. Eisenberg, David B. Strong, Philip B. Wright

10:30

Networking Break

10:45

TAX ACCOUNTING ISSUES IN MERGERS AND ACQUISITIONS

Tax accounting issues arising in taxable and tax-free acquisitions, dispositions and recapitalizations; treatment of M&A expenses; success-based fees; milestone payments; capitalized costs; recent IRS guidance and accounting method issues

Mary R. Duffy, George A. Hani, Amy J. Sargent

11:30

UNDERSTANDING AND MANAGING STOCK BASIS AND EARNINGS AND PROFITS (“E&P”)

Review of evolving law related to stock basis and E&P of U.S. and foreign corporations in light of significant changes made by the 2017 Tax Act and potential further tax reform; the value of basis and E&P in a post-2017 Tax Act world; planning techniques for optimizing attributes and avoiding pitfalls in business transactions

Marc A. Countryman, Karen Gilbreath Sowell, Gordon E. Warnke, James (Jim) S. Wang (Invited) [Attorney-Advisor, Office of Tax Policy, Department of the Treasury], Shane M. McCarrick (Invited) [Senior Counsel, Office of the Associate Chief Counsel (International), Branch 4, Internal Revenue Service]*

*Participating remotely

12:45

Lunch

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Afternoon Session:

1:15

TAX STRATEGIES FOR FINANCIALLY TROUBLED BUSINESSES AND OTHER LOSS COMPANIES

Equity for debt exchanges and ownership changes under Section 382; COD/OID/AHYDO; Section 108 and 382-related guidance; strategies for acquisitions of loss companies; issues in bankruptcies; debt for debt exchanges and modifications; issues regarding worthless stock deductions; recent developments
Mark R. Hoffenberg, Joseph M. Kronsoble, Richard M. Nugent, Brian R. Loss (Invited) [Senior Technician Reviewer, Office of the Associate Chief Counsel (Corporate), Branch 4, Internal Revenue Service]

2:15

Networking Break

2:30

CURRENT DEVELOPMENTS AT IRS CHIEF COUNSEL (INTERNATIONAL) Q&A

Eric Solomon, Peter H. Blessing [Associate Chief Counsel (International), Internal Revenue Service]

3:00

CROSS-BORDER ACQUISITIONS AND DIVESTITURES

Key corporate and shareholder tax issues; impact of changing corporate rates and limitations on losses and deductions; impact of global intangible low-taxed income (“GILTI”) or global minimum tax (“GMT”) on purchase transactions; recent and proposed changes to the foreign tax credit rules; some surprising changes affecting cross-chain transfers among affiliated corporations; impact of new and changing rules on some of the negotiating dynamics between buyers and sellers over issues such as a pre-closing tax indemnity and control of post-closing examinations

Joan C. Arnold, Gretchen T. Sierra, Moshe Spinowitz, Robert B. Williams, Jr. (Invited) [Senior Counsel, Office of the Associate Chief Counsel (International), Branch 4, Internal Revenue Service]

4:15

RESTRUCTURING MULTINATIONAL GROUPS

Cross-border structuring issues and the impact of GILTI, foreign-derived intangible income (“FDII”), base erosion anti-abuse tax (“BEAT”), Section 163(j) and anti-hybrid rules, as well as pending legislative and international proposals, the location of third-party and intercompany financing arrangements, tangible and intangible asset ownership, and intercompany service and contract arrangements

Joseph M. Calianno, Corey M. Goodman, Brian H. Jenn, Azeka J. Abramoff (Invited) [Special Counsel, Office of the Associate Chief Counsel (International), Internal Revenue Service]

5:30

Adjourn

AGENDA DAY THREE: 8:45 A.M. - 4:30 P.M.

Morning Session:

8:45

PRIVATE EQUITY: BUYING AND SELLING PARTNERSHIPS

Common issues in passthrough deals that are important to private equity buyers and sellers (as well as their lawyers and accountants), including the proper structuring of rollover, redemptions, leveraged distributions, over-the-top purchases, basis adjustments, ordering, the dreaded-BBA, UP-C IPOs, SPAC IPOs, SPAC UP-Cs, tax receivable agreements, management profits interests, and Section 163(j)

David H. Schnabel, Eric B. Sloan

10:00

PASSTHROUGH CORPORATIONS – REITs, UPREITs, UPCs, AND RICs

Discussion of entities that have elected to operate in alternative forms, separate, or in conjunction with, a related corporation and the tax issues associated with these types of entities, including key changes in operative rules and effective tax rates due to recent legislation and administrative guidance

Cristina Arumi, Sarah Beth Rizzo, Clifford M. Warren [Senior Level Counsel to the Associate Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service]

10:45

Networking Break

11:00

FINANCIAL INSTRUMENTS IN M&A AND OTHER CORPORATE TRANSACTIONS

Structuring M&A financings and related transactions in a post-2017 Tax Act and post-CARES Act world, including impacts of Section 163(j), BEAT and GILTI regimes

Eileen Marshall, William L. McRae

12:00

Lunch

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Afternoon Session:

12:30

STATE AND LOCAL TAX ISSUES IN CORPORATE M&A TRANSACTIONS

State and local tax issues that arise in corporate transactions and tax-free reorganizations; potential pitfalls and planning opportunities

John A. Biek, David A. Hughes

1:15

BALANCING TAX PLANNING, ADVOCACY, AND PROFESSIONAL ETHICS: THE RULES THAT EVERY TAX ADVISOR SHOULD KNOW

Ethical rules related to advising clients on corporate transactions, including tax motivated transactions, and the pitfalls encountered by the advisor at every stage – from the planning of the transaction, to providing tax opinions and recommending return positions, to dealing with the IRS in audit; the ethical rules and standards derived from the Internal Revenue Code, Circular 230, the AICPA Statements on Standards for Tax Services, and the ABA Model Rules of Professional Conduct

Megan L. Brackney, Jenny L. Johnson, Bradley M. Seltzer

2:15

Networking Break

2:30

CONSOLIDATED RETURN PLANNING AND STRATEGIES

Current issues in consolidated returns arising from recent legislation, including the 2017 Tax Act and the CARES Act, with respect to Section 163(j), Section 168(k), Section 245A, GILTI, FDII, opportunity zones, BEAT and other provisions; recent IRS Notices, proposed and final regulations, and PLRs; recent court decisions; and buyer and seller planning for acquisitions and dispositions, including tax sharing agreements

Bryan P. Collins, Olivia Ley Orobona, Michael L. Schler, Jeffrey L. Vogel, Marie C. Milnes-Vasquez (Invited) [Special Counsel to the Associate Chief Counsel (Corporate), Internal Revenue Service]

4:30

Adjourn

Faculty

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