MAYER·BROWN

European Tax Workshop

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Agenda

1. Coordination *versus* Harmonization: the EU Landscape
2. Current trends in European taxation
3. Current trends in European tax litigation
4. What to expect?
5. 10 holding locations in Europe

Introduction: Our European Tax Practice

- Our European tax practice covers every aspect of corporate, partnership, and individual taxation, including taxation of cross-border transactions, litigation, transfer pricing, and state and local issues
- About 20 lawyers in Brussels, Frankfurt, London and Paris and a network of correspondents in almost all European countries

1. Coordination versus Harmonization: the EU Landscape

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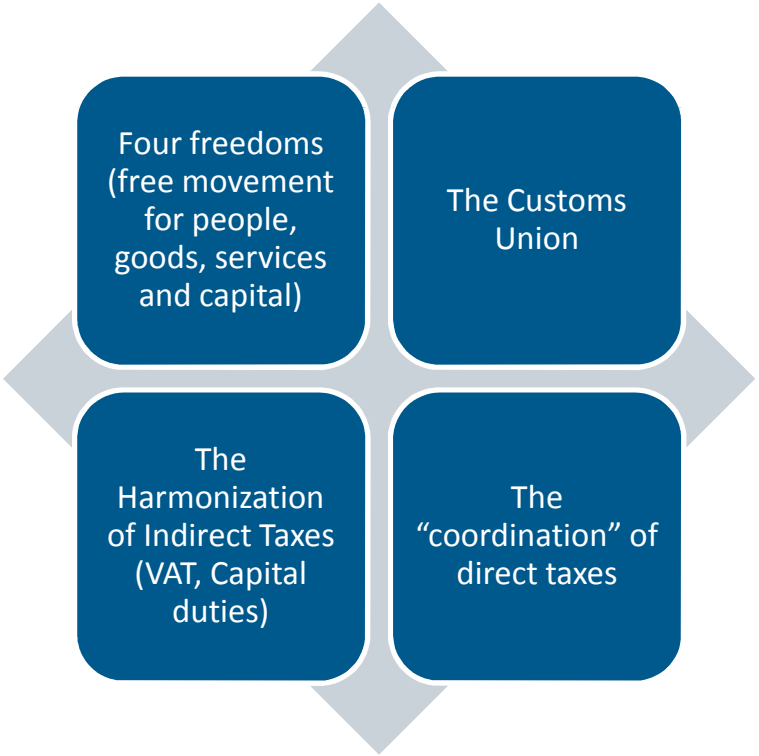
1. Coordination versus Harmonization: the EU Landscape

- Within the 28 Member States of the European Union; the Single Market
- The Single Market has different “cornerstones”



1. Coordination versus Harmonization: the EU Landscape

- In the field of corporate income tax, fiscal sovereignty of the Members States, no tax harmonization BUT:
  - Legislative initiatives towards coordination by EU directives (Parent / Subsidiary, Interest / Royalty, Merger directives)
    - E.g., No withholding taxes in an EU (EEA) situation, provided conditions are met
  - Infringement procedures by the EU Commission and case law of the European Court of Justice to chase "discriminations" such as:
    - Infringement for applying exit taxation: Case *National Grid Indus BV* (29 November 2011), *Commission v/Spain* (25 April 2013)
    - Infringement for applying withholding tax on dividends distributed by domestic companies to foreign investment funds (whilst exempt when distributed to domestic counterpart): *Aberdeen* (18 June 2009), *Commission v/Belgium* (October 2012), *Tate & Lyle Investments LTD* (12 July 2012)

1. Coordination versus Harmonization: the EU Landscape

- Other tools to prevent tax litigations: The EU Joint Transfer Pricing Forum
  - The Code of Conduct on European Transfer Pricing Documentation (27 June 2006, Official Journal C176, 28 June 2006)
  - The APA Guidelines (endorsed by the EU Council on 5 June 2007)
  - The revision of the Arbitration convention (COM/2009/472, 14 September 2009)
  - Guidelines on low value adding/routine services (2011)
  - Report on Cost Contribution Arrangements (CCA) and on services not creating Intangible Property (IP) (2012)
  - Report on Transfer Pricing Risk Assessment (2013)

1. Coordination versus Harmonization: the EU Landscape

- Influence from OECD work
  - Most EU and non-EU countries are inspired by OECD work when conducting audits and enacting legislation. More in particular, the following works have had major influence:
    - Transfer Pricing Guidelines; and
    - OECD Model Convention
  - But sometimes diverging interpretations
  - Role of commentaries

- **Overall assessment**: the EU is still a puzzle and local checks are needed

2. Current trends in European taxation

- Fight against BEPS, also in Europe!
- Quest for (even) more transparency
- Improve collection of tax revenues

2. Current trends in European taxation: Fight against BEPS

- OECD report addressing Base Erosion and Profit Shifting/ Action Plan (July 2013)
  - Lack of international coherence in tax systems:
    - Limit base erosion and interest deductibility
    - Focus on economic substance
    - Issue of digital economy
  - Use of tax treaties:
    - Anti-treaty shopping provision in OECD Model Convention
  - Transparency:
    - Need to disclose aggressive tax planning arrangements
    - Transfer pricing documentation: Country-by-country reporting

2. Current trends in European taxation: Fight against BEPS

- EU action plan (December 2012):
  - to strengthen the fight against tax fraud and tax evasion:
    - Amendement to Directives to combat double non-taxation
    - Tackle mismatches
    - Expand automatic exchange of information:cooperation
- EU Commission has also issued 2 recommendations (i) on aggressive tax planning and (ii) on minimum standards of good governance in tax matters

2. Current trends in European taxation: Fight against BEPS

- Recent unilateral country initiatives
  - Interest deductibility and thin cap rules:
    - **France**: Draft finance bill 2014 implements new anti-hybrid financing rule: Interest deductions only allowed if lender is subject to a 25% or higher CIT on the interest income
    - **Norway**: New proposals made in 2014 budget: interest paid to a related party is not deductible to the extent such interest exceeds 30% of EBITDA.
    - **Slovenia**: Law of 24 September 2013: expansion of current thin cap rules to include sister companies
  - Anti-hybrid rules:
    - **Germany**: Tax Act 2013: Participation exemption for dividends is no longer available when the dividend was treated as a tax deductible expense at the level of the distributing entity

2. Current trends in European taxation: Quest for (even) more transparency

- Tax authorities are looking for relevant information to detect BEPS
- Consequences: trend of increased compliance requirements (particularly in the area of Transfer Pricing)
    1. EUTPD initiative (27 June 2006)
    2. OECD White Paper on Transfer Pricing Documentation (30 July 2013)
    3. Recent unilateral country initiatives (such as France)

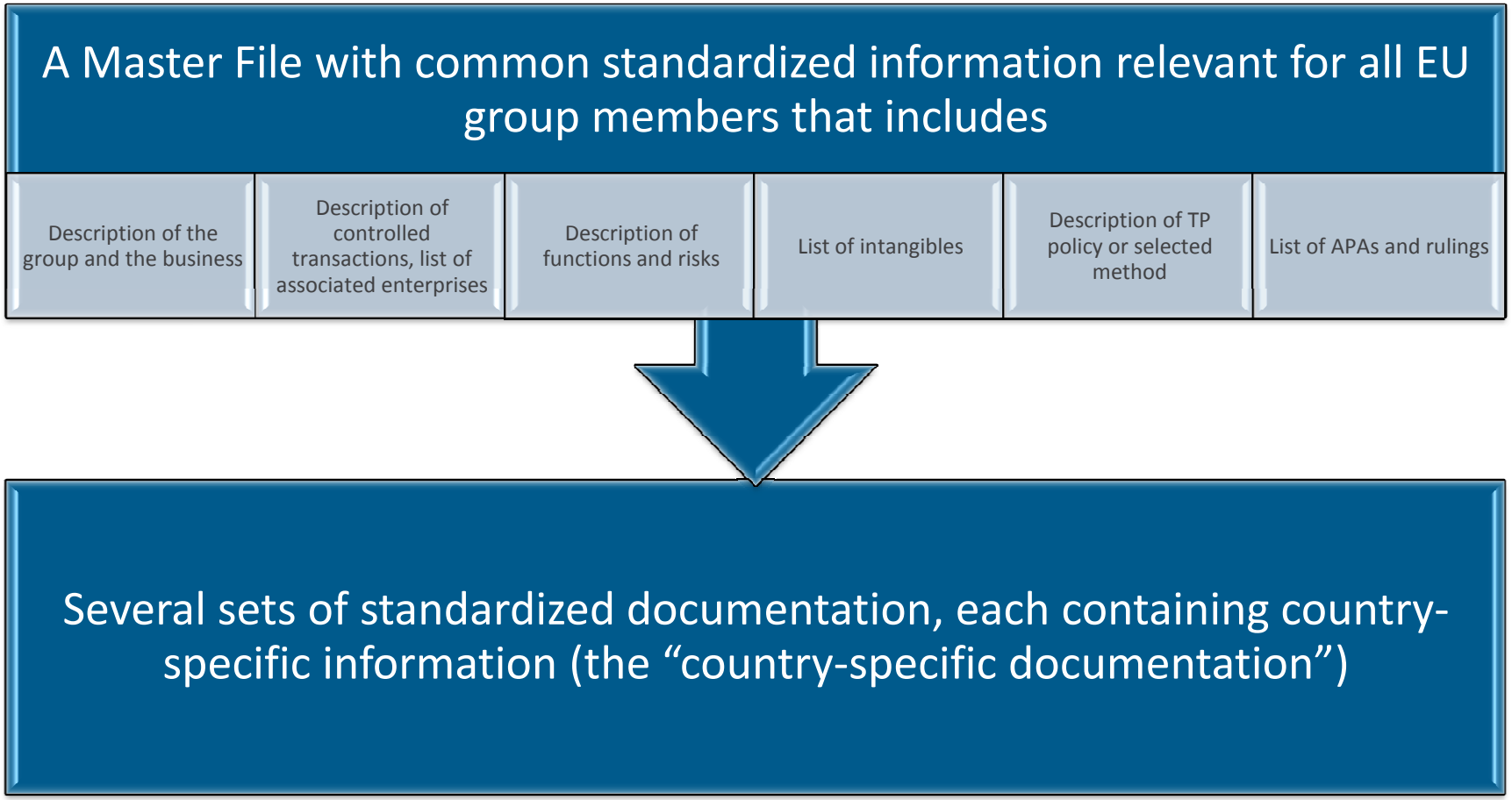
2. Current trends in European taxation: Quest for (even) more transparency

1. EUTPD initiative

- The EUTPD is a standardized set of documentation to be provided to tax authorities on the pricing of cross-border intra-group “transactions” (goods and services)
- Documentation under the EUTPD is recognized as good practice and valuable tool, even outside EU
- Taxpayer should still perform local checks and validations (e.g., on the use of English for country-specific documentation, the selection of comparables, etc.)

2. Current trends in European taxation: Quest for (even) more transparency

1. EUTPD initiative



2. Current trends in European taxation: Quest for (even) more transparency

2. OECD White Paper on Transfer Pricing Documentation

- Identification of three reasons to require transfer pricing documentation:
  - Enabling tax authorities to conduct a proper transfer pricing risk assessment (cf. OECD draft handbook on transfer pricing risk assessment of 30 April 2013)
  - Assuring that appropriate consideration to transfer pricing requirements is given by taxpayers
  - Enabling tax authorities to conduct thorough audit of the transfer pricing practices
- Increased focus on creating transparency for transactions with intangibles and business restructurings

2. Current trends in European taxation: Quest for (even) more transparency

2. OECD White Paper on Transfer Pricing Documentation

- Proposal to adopt "Coordinated documentation approach" inspired by EUTPD (Master File and country-specific file concept)
- Master File to provide tax authorities with "big picture" in order for tax authorities to conduct a proper risk assessment (information either on company wide basis or per line of business)
- Country-specific file to contain transfer pricing analysis on country-specific material transactions
- White Paper contains tables setting out in detail the items required in the Master- and Country-specific file

2. Current trends in European taxation: Quest for (even) more transparency

3. Recent unilateral country initiatives

- France - New draft bill 2013:
  - Obligation to submit transfer pricing documentation within 6 months from the filing of the income tax return
- Hungary - Decree of 18 June 2013:
  - Clarifications regarding transactions less than HUF 50 million
  - New simplification rules regarding certain low value adding services
- Poland - Decrees of 3 July 2013:
  - Implementation of concept of low value adding services
  - New rules regarding business restructurings

2. Current trends in European taxation: Quest for (even) more transparency

3. Recent unilateral country initiatives

- Russia: Transfer Pricing rules were adopted in July 2011 and introduced in Russia with effective date on 1 January 2012
  1. Documentation requirements are applicable to all transactions which are considered "controlled" when a certain threshold is met
  2. In addition to preparing documentation, the new law has also introduced a compulsory reporting requirement. A taxpayer must provide the tax authorities with a notification for every controlled transaction exceeding a certain threshold
  3. Non-compliance of the documentation requirement may trigger fines up to 40% of the adjustment in absence of compliant transfer pricing documentation (as from 2017)

2. Current trends in European taxation: Improve collection of tax revenues

- EU countries have been looking for more tax revenues in times of crisis but also promote investments in their countries
  - Implementation of additional taxes:
    - **France:** New draft finance bill 2014: Installation of a new tax called: "Cotisation sur l'excédent brut d'exploitation" (EBE). However, due to the economic environment a new proposal has been submitted to parliament to implement a new temporary surtax on the corporate income tax instead of the EBE tax
    - **Belgium:** Law of 30 July 2013: Installation of a "fairness tax". As from 2014, large companies are subject to this tax on their distributed dividends if during the taxable period part or all of the profits have been offset against notional interest deduction / carried forward tax losses
    - **Luxembourg:** Law of 13 December 2012: As from 1 January 2013, companies subject to CIT will also be subject to a minimum tax depending on the amount of their financial assets

2. Current trends in European taxation: Improve collection of tax revenues

- Other restrictive rules
  - **Austria**: New 2013 Guidelines: strict "substance-over-form" approach regarding carry forward rules and change of control
- Promoting new investments
  - **Sweden/Denmark/UK**: Reduction of CIT rate ranging between 20-22%
  - **Spain:** New law offers a reduced CIT rate in the first 2 years of commencement to boost entrepreneurial culture
  - **UK:** Government has proposed new tax incentives to kick-start investment in shale gas and unconventional onshore hydrocarbon developments in the UK

3. Current trends in European litigation: Permanent Establishment

- **Spain** *:Roche*, January 2012
  - RV (Spanish company) manufactures and packages products ordered by RVE (Swiss). It earns a cost-plus 3.3%
  - By separate agreement, RV is engaged as agent to promote RVE's products, earning a 2% on sales promoted by RVE
  - A warehouse rented by RV to RVE does not constitute a PE in Spain but RVE has a PE in Spain as a consequence of the manufacturing and promotional contract signed with RV. RV acts indeed act as a dependent agent of RVE and profits should be attributed to this PE
- See also in favor of the taxpayer : *Zimmer* in France / *Boston Scientific* in Italy (AFTER reversal by Supreme Court)

3. Current trends in European litigation: Deductibility of financial charges

- Recent European cases often refer to financial charges or intra-group guarantees (Italy, Spain, Germany, etc.)
- **The Netherlands:** Supreme Court (March 2013): A banking consortium granted a credit facility to A, a parent company of a Dutch group. This credit facility was not solely intended for A but also for the other group companies. The Dutch tax authorities refused to accept the writing off and claimed that the Dutch company accepted the joint and several liability to benefit its shareholder A and thus any profit/loss incurred was the result of that shareholder relationship.

3. Current trends in European litigation: Business Restructuring

- **France** , December 2012: A French distributor operated as an independent buy-sell entity for Allied Domecq Spirits on the French market. In 1999, the French distributor decided to convert to a commission agent.
- The French tax authorities claimed that the French distributor had transferred its customer base abroad to Allied Domecq Spirits because of the conversion.
- The Paris Administrative Court of Appeals agreed that the commission agent still legally owned its customer base, and in regard to transfer pricing, that the compensation of the commission agent reflected the new risks and functions it had assumed, and that, no further compensation was due .

3. Current trends in European litigation: Business Restructuring

- **France:** *Nestlé Finance* (Paris Administrative Court, May 11, 2011)
  - What is Nestlé Finance about: The transfer to a foreign company, without any compensation, of the cash pooling activities carried out by a French company is an indirect transfer of profits
  - Background: Transfer of cash pooling activities by a French cash pool leader (Nestlé Finance International "**NFI**") to a Swiss affiliate (NICE) without compensation
  - The French tax authorities, argued that NFI should have been compensated for the resulting transfer of profits to the Swiss entity and added back to its taxable income the amount of the consideration it should have derived

3. Current trends in European litigation: Intragroup services (benefit test)

- **Spain**: Supreme Court (May 2013): specific evidence found lacking for management fees charged by affiliates. The mere recording of an expense is not sufficient to presume the deductibility ; same conclusion as in earlier decisions (2007/2008)
- **Italy:** Tax Court of Lombardy(June 2012): burden of proof to the taxpayer satisfied by (i) description of services in the intra-group services agreement, AND (ii) periodical activity reports, AND (iii) absence of local administrative structure
- **France:** (pending): Restructuring costs are not undertaken to the benefit of the French subsidiary but are in the group interest. Deduction is denied

3. Current trends in European litigation: Intragroup services (shareholder costs)

- Recent European cases often refer to financial charges or intra-group guarantees (Italy, Spain, Germany, etc.)
- **The Netherlands:** Supreme Court (March 2013):
  - Umbrella loans and non-deductible guarantee payments
- **Russia:** Supreme Arbitration Court (July 2013):
  - also referring to lack of evidence of the benefit of HQ costs charged to the local company
  - Denial of increase of charges as no change in the organizational structure of the group

3. Current trends in European litigation: Intragroup services (documentation)

- **Italy:** Tax Court of Piemonte (January 2007):
  - Substantiation requires written, detailed agreement and invoices, plus documentation of benefits obtained by the subsidiary for each type of service/see also Court of Lombardy June 2012
- **Poland**: Supreme Court (March 2012):
  - Court underlined importance of transfer pricing documentation as evidence of the related parties' intent. The arguments provided by company should have been included in transfer pricing documentation, which was not the case
- **Germany**: (2012):
  - Services should be treated as a hidden profit distribution due to the lack of an effective advance written agreement. There was no real assessment as to whether the remuneration complied was at arm's length

4. What to expect ?

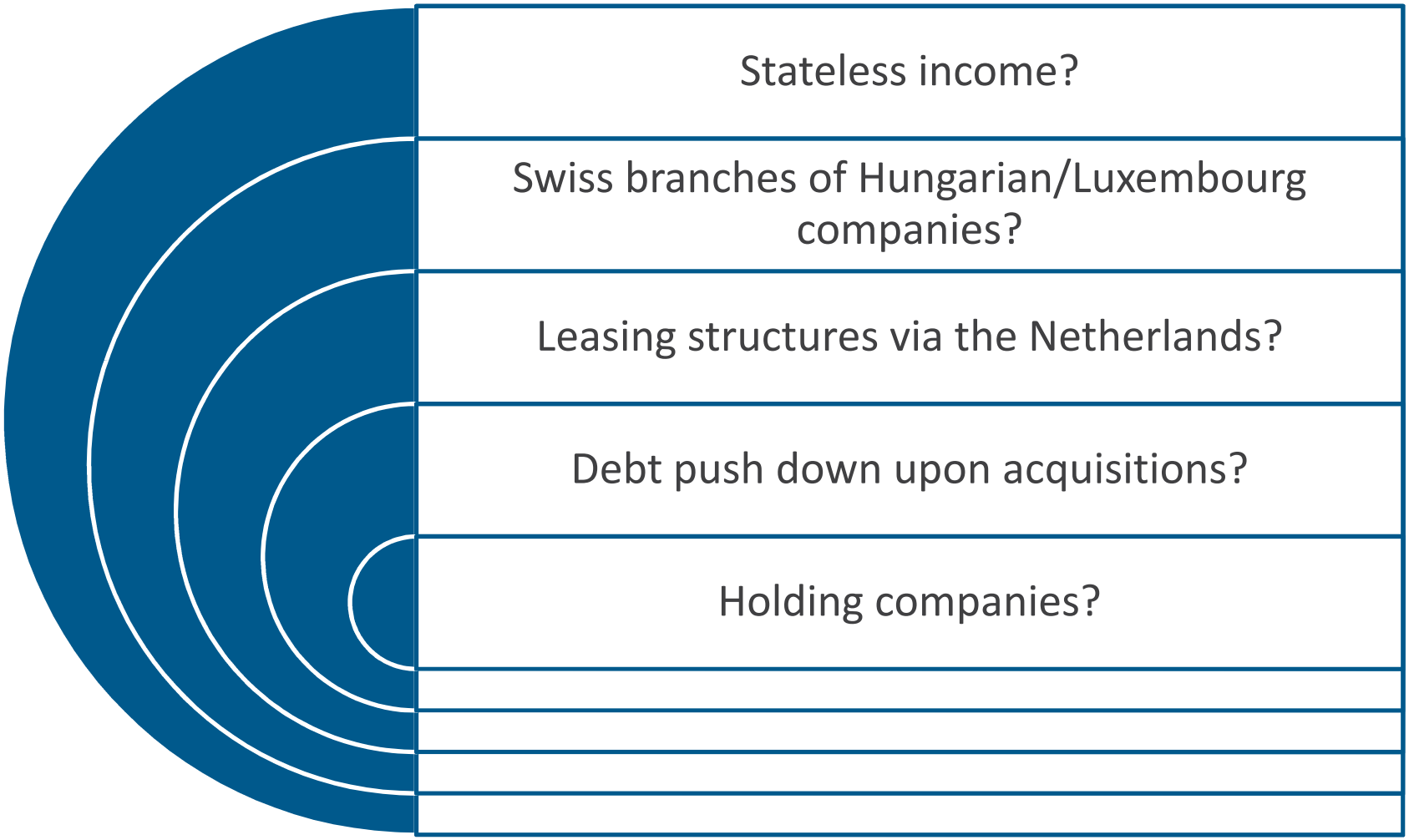
The end of “aggressive” tax planning?

More tax harmonization?

More compliance burden?

More taxes?

4. What to expect?
"Aggressive" tax planning?



5. 10 holding locations in Europe

- Features to consider

Tax features	Non tax features
Capital duty on equity contribution	Country risk and environment (corporate framework, administrative burden, etc.)
Taxation of dividends received	Availability of qualified services providers
Taxation of interest	Suitable banking environment
Taxation of capital gain	Accessibility (cf. substance requirements)
Withholding taxes rates	Others
Treaty network	
Others (rulings, exit strategies, etc.)	

5. 10 holding locations in Europe

	Belgium	France	Germany	Luxembourg	U.K.
Capital duty on equity contribution	No	No	No	No	No
Taxation of dividends received*	95% participation exemption	95% participation exemption	95% participation exemption	100% participation exemption	Exemption with option to tax
Taxation of interest	Taxable - 33.99%	Taxable – 33.33%	Taxable – approx. 30%	Taxable - 22.47% + 6.75% Municipal Business tax	Taxable – 23%
Capital gain on shares*	Provided that a one-year holding period is met: 0.412%. Otherwise 25%	88% participation exemption	95% exemption	100% Participation exemption	Taxable (exemption for trading companies)
Withholding tax on dividends**	Yes – 25%***	Yes – 30% (+ 3% surtax) (except for dividends paid to uncooperative territories – 75%)	Yes – 25% plus solidarity surcharge	Yes – 15%	0%
Withholding tax on interest**	Yes – 25%	0% (except for interest paid in uncooperative territories - 75%)	Generally 0%	0%	Yes – 20%
Treaty network	90	126	94	68	122
Other elements	Thin cap NID deduction Ruling	Thin cap CFC	interest stripping rules CFC Ruling	No specific thin cap No CFC Ruling	CFC Debt cap
Notes: * subject to conditions **domestic rates. Reduced rates available under EU Directive (in EU context) or tax treaties	***Reduced rate of available				

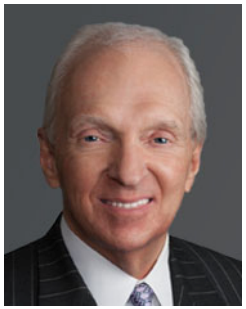
5. 10 holding locations in Europe

	The Netherlands	Ireland	Switzerland	Portugal	Austria
Capital duty on equity contribution	No	No	Yes – 1%	No	Yes – 1%
Taxation of dividends received from abroad*	100% participation exemption	Taxable (although tax credit available)	100% participation exemption	100% participation exemption	100% participation exemption
Taxation of interest	Taxable – 20% or 25%	Taxable – 12.5% or 25%	Taxable 8.5% (nominal of 7.8%)	Taxable –29.5-31.5%	Taxable –25%
Capital gains on shares*	100% participation exemption	100% participation exemption for EU and Treaty country subsidiaries	100% participation exemption	100% participation exemption	100% participation exemption with option to tax
Withholding tax on dividends**	0% (where the conditions of the participation exemption are met) – 15 %	20%	35%	25-35%%	25%
Withholding tax on interest**	0%	20%	Generally 0%	25-35%	25% but exemption available for intercompany loans
Treaty network (in force)	91	68	103	59	85
Other elements	Ruling Interest deductibility rules No CFC	Ruling No thin cap rule No CFC	Ruling No CFC Thin cap rules	CFC Interest deductibility rules	Ruling No CFC No thin cap rule
Notes: * subject to conditions **domestic rates. Reduced rates available under EU Directive (in EU context), similar arrangement (for Switzerland) or tax treaties					

Questions & Answers

Thank you

Contact



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Fact Sheet

Firm Overview

Mayer Brown is noted for its commitment to client service and its ability to solve the most complex and demanding legal and business challenges worldwide. The firm serves many of the world's largest companies and financial services organizations, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks.

Areas of Practice

Banking & Finance

Corporate & Securities

Environmental

Employment & Benefits

Financial Services Regulatory & Enforcement

Government/Global Trade

Intellectual Property

Litigation/Dispute Resolution

Supreme Court & Appellate

Real Estate

Restructuring, Bankruptcy & Insolvency

Structured Finance

Tax

Wealth Management

Fast Facts

OFFICE LOCATIONS

Americas	Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Rio de Janeiro,* São Paulo,* Washington DC
Asia	Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore
Europe	Brussels, Düsseldorf, Frankfurt, London, Paris

* Tauil & Chequer office

LEADERSHIP

Paul W. Theiss, *Chicago*
Chairman

Kenneth S. Geller, *Washington DC*
Managing Partner

Overview

Mayer Brown is a leading global law firm advising clients across the Americas, Europe and Asia. The firm is known for its client-focused approach to providing creative solutions to complex problems on behalf of businesses, governments and individuals. Mayer Brown is particularly renowned for its Supreme Court & Appellate, Litigation, Corporate & Securities, Finance, Real Estate, Intellectual Property and Tax practices.

The firm operates in association with Tauil & Chequer Advogados in Brazil. Mayer Brown serves many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies together with global leaders in major industries.

Mayer Brown advises on both regional and international transactions and litigation and its lawyers have extensive experience managing pan-European, transatlantic and global projects.

Reputation

Benchmark Litigation 2013 gave Mayer Brown a top-tier ranking in the national Appellate category. The firm is also ranked in the national Antitrust and Commercial Litigation categories.

Mayer Brown is ranked #2 for client service among 650 global law firms in the 2013 *BTI Client Service A-Team* survey based on feedback from corporate counsel at global and Fortune 1000 companies.

The 2013 *IFLR1000*, a guide to the world's leading financial law firms, ranked Mayer Brown in 48 categories. The publication also listed 43 partners as "Leading Lawyers" in their practice areas.

The 2013 edition of *Legal 500 United States* ranked Mayer Brown in 38 categories, including top-tier rankings in six categories.

The 2013 edition of *Chambers UK* ranked Mayer Brown in 35 practice categories, including five Band One rankings. *Chambers UK* also awarded 56 Mayer Brown lawyers a total of 68 rankings in 36 practice categories, including eight Band One or higher rankings.

The 2013 edition of *Chambers Asia-Pacific* ranked Mayer Brown JSM in 28 practice categories, including nine Band One rankings. Chambers also awarded 43 Mayer Brown JSM lawyers a total of 51 rankings in 30 practice categories, including 14 Band One or higher rankings.

The 2013 edition of *Chambers USA: America's Leading Lawyers for Business* ranked 131 Mayer Brown lawyers, with 154 total rankings, in 72 nationwide and/or state practice categories. Of these, 29 are top-band or higher rankings in 28 nationwide and/or state categories.

Mayer Brown's Tax Transactions & Consulting practice was ranked as a tier-one tax transactional firm in North America in International Tax Review's 2013 "World's Leading Transactional Firms Survey," a guide to the world's leading tax firms.

The 2013 edition of *Chambers Global* ranked Mayer Brown in 71 categories in 12 geographic regions, including Africa-wide, Asia-Pacific Region, Belgium, China, Europe-wide, France, Germany, Global-wide, Latin America-wide, United Kingdom, United States and Vietnam.

The 2013 edition of *Legal 500 Europe, Middle East & Africa* (EMEA) ranked Mayer Brown in 50 practice categories, including three are top-tier rankings: EU Regulatory – Chemicals (REACH), Belgium; EU Regulatory – Food, Belgium; Private Equity, France.

Mayer Brown's IP practice was ranked first-tier nationally in Copyright, IP Litigation, Patent Litigation, Patent Law and Trademark Law in the 2012-2013 *U.S. News/Best Lawyers* "Best Law Firms" rankings.

Law360 has recognized the firm as one of the "Global 20" law firms with the greatest worldwide reach and expertise. The firm's Government Contracts group was named a 2012 "Practice Group of the Year."

Mayer Brown JSM has been named Asian Legal Business "Firm of the Year" 2012 in four categories: Construction, Employment, Insolvency & Restructuring and Real Estate.

For the third consecutive year, Mayer Brown ranked among the most innovative law firms in the *Financial Times*' "US Innovative Lawyers" report, ranking 12th in the 2012 edition.

Mayer Brown was named one of the top six US litigation firms by *The American Lawyer* in its 2012 Litigation Department of the Year report.

Mayer Brown's Paris office received the "Rising Team in International Arbitration" and a silver trophy for "Best Real Estate and Real Estate Finance Team" at the 12th annual "Trophées du Droit et du Contentieux" law and litigation ceremony.

Mayer Brown's German offices were nominated for the third time as Law Firm of the Year in the Banking & Finance category of the 2012 Juve Awards, sponsored by *Juve* magazine, the leading publication covering the legal profession in Germany.

Tax Transactions and Consulting Practice

"[Mayer Brown's Tax group provides] 'A quality work product' where 'timeliness and responsiveness of the service is outstanding.'"

Legal 500 USA 2012

Transactional and Tax Planning

Mayer Brown's Transactional & Tax Planning practice consists of approximately 100 lawyers in offices across the globe. The firm's tax practice covers every aspect of corporate, partnership and individual taxation in the United States and Europe, including taxation of domestic and cross-border issues at the national, state and local tax level, and certain specialty areas through our association with Tauil & Chequer Avogados in Brazil. The firm's practice is comprised of specialized subpractices in transactions, consulting and planning, audits, administrative appeals and litigation, and government relations. Our transactional and consulting tax practices include partners located in four United States offices, the United Kingdom, Germany, France and Belgium. The practice covers nearly every type of business transaction and restructuring, and is internationally recognized as a leader in the field.

Business Combinations and Divestitures

Our lawyers regularly represent clients on the tax aspects of mergers, acquisitions, joint ventures, spin-offs, split-offs and other business combination and divestiture transactions. Such work also regularly involves tax planning and advice relating to post-acquisition integrations and other intercompany restructurings. This work regularly involves a wide range of domestic and cross-border tax structuring and related planning projects.

Government Relations

Our tax lawyers are considered leaders in their respective fields and play leadership roles in various tax advisory groups and committees. They are actively involved in assisting with drafting and amending new tax legislation in the key global financial centres where we have offices. Many of Mayer Brown's tax practitioners have substantial government experience, including positions at the Internal Revenue Service (IRS) and the United States Department of Justice. Members of this group include a former IRS Associate Chief Counsel (Technical), a former IRS Deputy Associate Chief Counsel (International) and Special Assistant to the IRS Chief Counsel, who was in charge of all domestic IRS regulations, rulings and other published guidance. Many of our lawyers also hold leadership roles in various tax advisory groups and committees. We help companies and coalitions develop comprehensive strategies to achieve their tax policy goals. We advise on the potential impact of proposed tax law changes and how to mitigate their effects. We also participate in the drafting and commenting stages with the members and staffs of the House Ways and Means Committee, the Senate Finance Committee, the Joint Committee on Taxation and other legislative and regulatory authorities.

Bankruptcy and Financial Restructuring

We regularly represent creditors, equity investors and debtors in the tax aspects of complex financial restructuring transactions and workouts, pursuant to both bankruptcy proceedings and out-of-court agreements. This experience includes the formation of funds investing in distressed debt instruments and advising funds and other financial institutions regarding investing in, holding and restructuring distressed debt instruments.

Capital Markets

We represent issuers, underwriters and placement agents in respect of the tax aspects of all manner of capital market issuances, redemptions, solicitations and restructurings. Our extensive experience includes public and private debt, high-yield debt, bonds, common and preferred stock, options, debentures, equity-linked notes, credit-linked notes, convertible and exchangeable instruments, swaps, forward contracts, collars and various tax-advantage securities.

International

We have a leading international tax transactional, planning and consulting practice, advising clients internationally on inbound and outbound tax planning, global reorganizations and restructurings, intangibles, transfer pricing and minimizing of worldwide effective tax rates.

Leasing, Asset Finance and Renewable Energy

Mayer Brown's tax lawyers represent equity investors, lenders and lessees on all tax matters relating to real and personal property sale-leasebacks, leveraged and single-investor leases, public/private partnership (PPP) and other infrastructure transactions, cross-border and tax-exempt lease transactions, synthetic leases and facility and project financings. A significant focus of our leasing and asset finance work is in the area of renewable energy. In particular, we advise equity investors, lenders, developers, equipment suppliers and utilities in electric energy projects involving all major renewable resources, including wind, solar, geothermal, hydroelectric and biomass. We are experienced in managing the qualification for and monetization of tax credits (including those provided under IRC sections 45 and 48) and other tax benefits associated with renewable energy projects.

Real Estate

Our tax lawyers, both globally and domestically, represent public and private real estate investment trusts, institutional real estate investors, and real estate fund managers and developers. We also advise as to the structuring of cross-border real estate investments and on indirect tax aspects of real estate transactions.

Employee Benefits and Wealth Management

Mayer Brown's tax lawyers assist with managing the tax components related to a number of employee benefits and wealth management transactions.

Tauil & Chequer Brazil Practice

Specialized in taxation and with a significant practice in M&A and capital markets, Tauil & Chequer Advogados in association with Mayer Brown provides its clients with comprehensive tax consulting and tax planning advice, in addition to representation in administrative and legal proceedings. With extensive experience in all taxation levels–federal, state and local–and a reputation for the international tax practice, the firm has helped clients solve highly complex tax issues. Acknowledged as one of the best in Brazil, T&C's international tax practice includes international investment planning, capital import and export and advice on matters relating to expatriates. Our lawyers are familiar with compliance requirements in relation to complex ancillary US obligations, such as FIN 48 and FAS 5, which facilitates communication with, and guidance to, tax departments at the headquarters of multinational companies. Our team also advises on several tax regimes in relation to direct and indirect taxes and in connection with creating, maintaining and terminating joint ventures, trusts, specific purpose companies (SPC) and negotiating tax clauses in EPC, Construction, Joint Operating and Joint Venture Agreements. Our team also stands out in negotiations of tax incentives associated with new investments in Brazil and complex corporate restructurings, partial spin-offs, winding up companies and mergers and acquisitions.

Tax Controversy and Transfer Pricing Practice Overview

In 2012, Mayer Brown's Tax Controversy practice was recognized by both Chambers USA and Legal 500 US with their highest rankings for the sixth consecutive year.

Mayer Brown's Tax Controversy and Transfer Pricing practice is a leader in the field, with nearly 45 lawyers whose level of experience in providing transfer pricing planning and handling tax controversies is unmatched. Its deep experience allows the practice to effectively represent clients in a variety of situations, such as counseling corporations during tax audits, pursuing administrative appeals of audit results, litigating tax matters at the trial court or appellate court level, or providing clients with advice and representation involving international tax matters such as transfer pricing.

Reflecting this overall depth of experience and expertise is the fact that, for an unprecedented seventh consecutive year, *Chambers USA* ranked Mayer Brown's practice in the top tier for 2013. *Legal 500*, another leading ranking institution, has similarly ranked the practice for seven consecutive years. A number of our lawyers have also been recognized by *Chambers USA* and *Legal 500* as leaders in tax controversy.

In addition, the *International Tax Review's* "Tax Controversy Leaders" guide ranks the world's leading tax dispute resolution lawyers, including Mayer Brown lawyers from nine offices. Mayer Brown had more than twice as many lawyers ranked as any other law firm. In 2012, *International Tax Review* recognized Mayer Brown's Tax Controversy practice as the leading practice in seven categories, including among others: Americas Tax Disputes Firm of the Year, U.S. Tax Court Firm of the Year, and U.S. Transfer Pricing Firm of the Year.

Tax Controversy Practice

Pre-Audit

The best strategy to efficiently resolve a tax controversy is to have anticipated the tax risks inherent in a transaction when it is planned. Corporate clients often request our tax controversy attorneys to "stress test" proposed transactions for potential audit and litigation risks. We are also frequently called upon to engage and manage experts, including valuation and economic professionals, to ensure the transaction is properly vetted.

As part of our pre-audit practice, we have developed possibly the preeminent Pre-Filing Agreement practice in the country. The Pre-Filing Program allows taxpayers to resolve factually intense tax issues before they file their return. To date, we have used this program to resolve several issues including deductibility of business expenses related to government settlements and bad debt deductions.

Audits

Our goal is to resolve tax controversies in the most efficient manner for our clients. To achieve this goal we provide skillful representation during all phases of a tax controversy, starting with the audit. We assist clients with large case audits, in developing audit strategies, answering IDRs, preparing for interviews and site visits, and dealing with IRS agents and other IRS audit team members. The extent of our role in an audit depends on each individual client's needs and the circumstances of each matter,

including the intensity of IRS counsel's activity in the audit. In some audits, we have played a lead role at the request of the taxpayer, in effect managing the entire audit; in others, we have served a purely advisory role, staying in the background with no direct contact with the IRS. In our advisory role, we often assist taxpayers dealing with discovery issues to ensure electronic discovery and privilege issues are properly addressed. We have been involved in recent audits related to:

- financial products, related to leases, swaps, debt versus equity characterizations, repatriations of income, use of foreign tax credits, and dividend received deductions;
- economic substance and substance-over-form questions pertaining to a myriad of issues;
- corporate acquisitions and divestitures, including the tax treatment of tangible and intangible assets in acquisitions;
- tax accounting issues;
- conversion of possessions corporation to controlled foreign corporation status;
- offshore insurance operations;
- U.S. trade or business and effectively connected U.S. source income issues;
- sourcing of export sales income;
- manufacturing characterization for section 199 and Subpart F purposes;
- creditability of foreign taxes and the U.S. implications of foreign country taxation; and
- cross-border transfer pricing for goods, services, and intangibles.

We have also represented clients involved in promoter audits. These highly sensitive matters require special care and attention, all of which are facts and circumstances dependent. Skillful representation during audits is especially important to resolve controversies quickly and efficiently, particularly in today's environment of increased scrutiny on various types of transactions. Successful representation in large corporate audits involves substantive tax knowledge and a mastery of unique and sometimes arcane procedural rules.

- In the *Westreco* case, we were successful in establishing crucial procedural safeguards against abusive audits.
- We have represented several clients in successfully defending against IRS summons enforcement cases in federal district court, *e.g.*, the *Eaton Corporation* case.
- We are experienced with the I.R.C. § 6038A information-reporting regulations for foreign-owned corporations and the I.R.C. § 6662 transfer pricing penalty regulations. We successfully defended *Nissei Sangyo* against an attempt by the IRS to use I.R.C. § 6038A to force the company to translate thousands of pages of documents from Japanese into English.
- We represented taxpayers in precedent-setting actions by the IRS to obtain tax return preparation software source code.
- We assisted a major corporation in obtaining a refund of tax paid after an accounting restatement reduced its reported income.

- We have advised and managed discovery matters, including, among others, development of hold orders, and document collection and review strategies.

Administrative Appeals

Our U.S. lawyers have represented many clients in IRS Appeals across the country, and have substantial experience negotiating with IRS Appeals officers. We have also participated in the Fast Track Mediation process with IRS Exam, which involves using IRS Appeals personnel as mediators as well as Post-Appeals Mediation. We have also been involved in negotiating with the IRS to establish arbitration and mediation procedures used as an alternative to trial for resolving cases.

Among other issues handled in Appeals, we have handled several large cases involving transfer pricing issues, customer-based intangibles, employee benefits and executive compensation issues, partnerships, debt-equity characterization, leasing, involuntary conversion, subpart F issues, FSC and ETI issues, and corporate issues such as like-kind exchanges, leveraged buy-outs, and the deductibility of interest on debt incurred to redeem stock. The IRS' use of generic tax doctrines like economic substance is frequently an overlay in many of these issues. We have handled Appeals cases for clients from a wide array of industries, including many of the world's largest food, transportation, banking and financial, apparel, healthcare, pharmaceutical and technology companies.

Litigation

For most taxpayers, litigation is an option of last resort. Indeed, the vast majority of controversy matters are settled before litigation becomes necessary. Nevertheless, it is our philosophy that advantageous settlements are most often achieved when the IRS believes that the taxpayer's counsel is willing and able to litigate effectively if the need arises. We have found that tax litigation is conducted most effectively by lawyers who have a solid background in tax and who are also trained in the unique skills of litigation. For this reason, the lawyers in our tax controversy group spend virtually all of their time on tax controversy matters. This specialization ensures that skillful representation in the courtroom is combined with sophisticated tax advice.

Collectively we have litigated more than 100 U.S. tax cases. Particular areas of substantive expertise within our group include cross-border transfer pricing for goods, services, and intangibles; economic substance issues; corporate reorganizations; partnerships; leasing and financial products issues, including lease-in-lease-out (LILO); tax-advantaged transactions; tax treatment of tangible and intangible assets in acquisitions; tax accounting issues; offshore insurance operations; issues concerning whether a taxpayer is engaged in a U.S. trade or business or has effectively connected U.S. source income; sourcing of export sales income; manufacturing characterization for Subpart F purposes; entitlement to, and computation of, FSC and ETI benefits; and bank taxation, particularly with regard to creditability of foreign taxes and the U.S. implications of foreign-country taxation.

Major Successes

- We successfully represented **Flextronics** in litigation before the U.S. Tax Court and Ninth Circuit concerning an acquisition of a North Carolina manufacturing facility completed by a subsidiary, C-MAC Holdings, prior to the time it was acquired by Flextronics. At issue was whether the

assets acquired by CMAC received a step up in basis under I.R.C. §§ 357(c) and 362. The IRS arguments were economic substance, substance over form and step transaction.

- We successfully represented **Eaton Corporation** in three of four summons enforcement actions brought by the United States. Of note, we were able to establish that the work product protection existed in connection with Eaton's APA requests and that employee performance evaluations are subject to a heightened degree of privacy in the context of an IRS inquiry.
- We successfully represented **Consolidated Edison** in a case before the U.S. Court of Federal Claims involving the income tax treatment of a LILO transaction. The U.S. government challenged **Consolidated Edison's** tax treatment of the leveraged lease of a foreign power plant in the Netherlands on economic substance and substance over form grounds. At the trial level the *Consolidated Edison* case was the only taxpayer victory in a LILO case. *Consolidated Edison* was recently reversed based on a new legal standard that was different than the standard applicable at the time of trial.
- We successfully litigated two related cases, *United Parcel Service* and *Overseas Partners Ltd.,* regarding the tax treatment of income attributable to parcel insurance purchased by **UPS's** shippers. These complex cases involved several issues, including economic substance and transfer pricing issues. The Eleventh Circuit vindicated **UPS's** position on economic substance, reversing the Tax Court's holding on that issue, and remanding the case for further proceedings on the transfer pricing issue.
- On behalf of **Tribune**, we litigated a case presenting the question of whether economic substance and substance over form theories permit recharacterization of a transaction that was in compliance with the reorganization provisions as a "sale". Although the Tax Court found for the IRS, the case was settled on appeal to the Seventh Circuit for a substantial amount, a rare occurrence.
- For **Nestlé**, we successfully litigated three cases: valuation and amortization of intangibles and debt-equity characterization, which arose from Nestlé's $3.2 billion acquisition of the Carnation Company; allocation of income between a parent Swiss company and a U.S. research subsidiary; and calculation of amount in receipt where preferred stock and property were exchanged.
- We successfully represented **National Semiconductor** and **Seagate Technology** in major transfer pricing cases involving their offshore manufacturing operations.
- We successfully litigated a highly technical issue for **Intel** regarding the computation of foreign tax credits.
- We successfully represented **Comdisco** in a major taxpayer win in leverage lease equipment transactions challenged on the basis of economic substance like arguments.
- We successfully represented **RJR Nabisco** in two cases involving the amortization of trademarks and the deductibility of package design costs.

Appellate

Drawing on the resources of the firm's renowned Supreme Court and Appellate practice, our tax appellate attorneys offer a valuable combination of technical tax knowledge, broad experience in pursuing appeals, and practical experience in trying tax cases in the courts of first instance.

We have successfully represented taxpayers on appeal from lower court decisions in major tax cases and have participated directly in the briefing and argument of cases of major importance to the development of tax law.

Major Successes

- **DC Circuit:** *Riggs* (holding that official tax receipts of Brazilian government were entitled to evidentiary presumption)
- **Federal Circuit:** *Bankers Trust* (reversing Court of Federal Claims on Brazilian "pecuniary benefit" foreign tax credit issue)
- **Second Circuit:** *Nestlé Holdings, Inc*. (validation of intangibles)
- **Fourth Circuit:** *Volvo Group North America, Inc*. (vacating district court decision on application of I.R.C. § 471 to inventory transfers)
- **Sixth Circuit:** *The Limited* (reversing the Tax Court's holding that CFC's purchase of CDs from affiliated credit card bank failed to qualify as § 956(b)(2)(A) "deposits with [a] person carrying on banking business")
- **Seventh Circuit:** The *Tribune* case (relating to whether an otherwise qualified reorganization was a sale for tax purposes)
- **Ninth Circuit:** *Intel Corporation* (allocation of income partly from sources within a foreign country under Treas. Reg. § 1.863-3(b)(2))
- **Ninth Circuit:** *Flextronics* (affirming Tax Court's decision refusing to apply economic substance and step transaction to an M&A transaction)
- **Tenth Circuit:** *Tele-Communications, Inc*. (application of I.R.C. § 1253 to cable television franchises)
- **Eleventh Circuit:** *United Parcel Service* (reversing Tax Court's finding on sham, assignment of income, lack of economic substance and penalties)

Transfer Pricing Practice

Mayer Brown's Transfer Pricing group is one of the most active in the country, and is known for employing innovative techniques in providing clients with advice and representation for transfer pricing structuring, large case audit and administrative appeals, U.S. and foreign unilateral and bilateral advance pricing agreements, competent authority matters and litigation.

A number of our attorneys are devoted almost exclusively to transfer pricing matters, with broad experience in the representation of corporate taxpayers in transfer pricing planning, audits, IRS Appeals, and Competent Authority, as well as in the federal courts. Indeed, the *International Tax Review* has

ranked several of our partners among the leading transfer pricing advisors in the U.S., and many of our attorneys have significant government experience at the IRS and Department of Justice, where they participated in Competent Authority and treaty negotiations; litigated various transfer pricing issues; and contributed to the development of and major revisions in several regulatory and procedural projects. The head of the Tax Controversy and Transfer Pricing practice was one of the Chief Counsel's original Special Trail Attorneys and has tried six major transfer pricing cases between his government service and his twenty-plus-year tenure at Mayer Brown. Our group has tried many large transfer pricing cases, including *United Parcel Service, Overseas Partners Ltd., Nestlé Westreco, Seagate* and *National Semiconductor.* Reflecting this overall depth of experience, the *International Tax Review* has ranked 23 of our partners among the leading tax controversy advisors in the United States, among them, highly experienced transfer pricing practitioners.

In 2008, we launched our fully integrated European Transfer Pricing Centre, headquartered in Brussels, to coordinate transfer pricing strategies in the area. The breadth of practice experience, the ability to manage Pan-European projects, and the concentrated EU focus of the Centre ensures that each client's transfer pricing strategy is optimized on a multi-country level.

We also have extensive experience in the negotiation of Advance Pricing Agreements (APAs) with tax authorities in both the U.S. and in foreign countries. One of our partners founded the first APA program when he was at the IRS. These negotiations generally involve the U.S. tax authorities, but we are increasingly providing our clients with certainty in foreign-to-foreign contexts by seeking APAs involving only foreign taxing authorities.

Representative Transfer Pricing Experience

- We have worked closely with a Fortune 100 company to establish and restructure its global supply chain platform. Among other things, the project entailed migration of intellectual property to its offshore structure, establishing (and defending) sufficient substance in the offshore structure to justify the company's transfer pricing arrangements, drafting related and unrelated contract manufacturing, services, and related agreements, and working collaboratively with the company's tax and general counsel departments and other outside advisors to ensure a smooth implementation of the structure.

- We have worked as part of a team assembled by a Fortune 100 company to establish supply chains for two products, one of which ultimately became a top selling global product. Prior to product introduction, the team worked to ensure that sufficient substance was located outside the U.S. to establish those locations as the principal centers of management and control of functions, risks and assets related to the new products. Issues addressed included ownership of patents, trademarks and other intellectual property; decision making and risk allocation with respect to ongoing research and development activities; management and control of marketing activities; management and control of distribution activities; management and control of manufacturing; and management of finance, legal and accounting functions.

- We have worked with another Fortune 100 company to assist it in structuring a complex supply chain and manufacturing arrangement for one of its major products. A foreign company was established as the central location for the management and control of the product's functions, risks and assets. We assisted the company in structuring the interactions between the various entities involved to properly reflect the relationships between them, respecting the ownership of intellectual property and the allocation of risk.

- We have worked with a large manufacturer to migrate its headquarters and to establish its supply chain. Under the structure that was established, most significant functions with respect to the company's products are managed and controlled from the new headquarters. The company operates in virtually every country in the world through a web of contract manufacturing and contract distribution relationships. Functions managed and controlled at the headquarters include research and development, marketing, ownership of intellectual property, and accounting, legal and finance activities. With our assistance, the client entered into a series of bilateral advance pricing agreements between the headquarters' tax authority on one hand and the tax authorities of several of the largest countries in which it carries on manufacturing and distribution activities. We have also been involved in the subsequent renewal of certain of the advance pricing agreements.

- We assisted a large global company to restructure its operations into a principal-type structure in connection with the acquisition of the company by a non-U.S. acquirer. The restructuring involved shifting risks, functions, and assets from the United States and entirely revamping the company's transfer pricing arrangements, including drafting umbrella transfer pricing and related intercompany services and transportation agreements. In this regard, we have also assisted the company in defending its transfer pricing policies on audit by the IRS.

Over the past two decades, Mayer Brown has successfully represented clients in some of the highest profile I.R.C. section 482 cases. This practical experience is invaluable as we work with our clients to establish transfer pricing structures and policies that will withstand scrutiny by the IRS and other taxing authorities. The list below highlights a number of these representative cases:

- *Westreco, Inc. (Nestlé) v. Commissioner of Internal Revenue*, T.C. Memo. 1992-561, 64 T.C.M. (CCH) 849 (1992) (§ 482 adjustments involving R&D services provided by US subsidiary to foreign parent)
- *Seagate Technology, Inc. v. Commissioner of Internal Revenue*, 102 T.C. 149 (1994) (§ 482 adjustments involving services, cost sharing arrangement, and manufacturing and sale of tangible property)
- *National Semiconductor Corporation v. Commissioner of Internal Revenue*, T.C. Memo. 1994-195, 67 T.C.M. (CCH) 2849 (1994), *acq. in result*, 1995-2 C.B.1 (§ 482 adjustments involving manufacturing and sale of tangible property)
- *Nestlé Holdings, Inc. v. Commissioner of Internal Revenue*, T.C. Memo. 1995-441, 70 T.C.M. (CCH) 682 (1995) (IRC § 482 reallocations relating to intangibles arising out of the Carnation acquisition)
- *United Parcel Service of America v. Commissioner of Internal Revenue*, T.C. Memo. 1999-268, 78 T.C.M. (CCH) 262 (1999) (sham transaction and IRC §§ 61, 482 and 845 reallocations concerning intercompany services)

Mayer Brown is presently representing Eaton Corporation and Boston Scientific Corporation in transfer pricing cases docketed in the U.S. Tax Court.

State & Local Tax Practice Overview

Mayer Brown's Tax practice is globally recognized as a top-tier practice by Chambers USA, Legal 500 US and International Tax Review.

Mayer Brown's State & Local Tax practice assists businesses and individuals with tax controversies and tax planning issues in jurisdictions throughout the United States. Our attorneys posses experience handling a broad array of state tax issues and are known for their experience and commitment to client service.

In the controversy area, our attorneys assist with everything from state tax administrative appeals to United States Supreme Court litigation involving constitutional issues. We have experience working with administrative agencies in nearly every state to obtain favorable, confidential settlements for our clients. When settlement is not possible, we have the resources to handle even the most complex state tax litigation matter and if necessary to take it "all the way up." Our firm recently won the *Polar Tankers v. City of Valdez* case before the United States Supreme Court, a closely-watched case among state and local tax practitioners.

In the planning area, our attorneys regularly provide advice and solutions with respect to the state and local tax consequences of complex transactions.

We have experience with a wide variety of state and local taxes, including but not limited to, corporate income taxes, financial institution taxes, insurance taxes, gross receipts taxes, franchise taxes, personal income taxes, sales and use taxes, real estate transfer taxes, employment withholding taxes and telecommunications taxes.

We also regularly advise clients in the following areas:

Nexus

We have assisted clients with nexus disputes in many different states, including with respect to hot-button issues such as economic nexus. We have handled nexus audits, nexus litigation, and have offered written and oral advice concerning whether certain activities create nexus. Where appropriate, we have assisted clients in obtaining voluntary disclosure agreements, both directly through the states and through the Multistate Tax Commission.

Tax Base Issues

We have offered nationwide advice with respect to whether certain income should be included in the tax base in relevant jurisdictions. Additionally, we have assisted clients with business/non-business income and unitary/non-unitary income audits and litigation across the country.

Composition of State Tax Group/Combined Group

We have worked with clients to determine which corporations should be included in a combined group. We have experience handling audits in which state tax authorities are attempting to add corporations to a combined group or remove corporations from a combined group.

Sales and Use Tax Planning and Structuring

Our attorneys are regularly asked to consider the most efficient tax structure from a sales and use tax perspective, including providing insight with respect to the applicability of relevant exemptions.

Electronic Commerce

We have represented website operators in state tax audits on the issue of whether the website is providing a non-taxable service or is licensing tangible personal property. We have offered advice on the applicability of Amazon laws to various businesses and have offered advice with respect to how it might be possible to overcome the presumption of constitutionality contained in Amazon statutes.

Federal Conformity/Non-Conformity Issues

Our attorneys have offered advice concerning the availability of net operating losses in numerous jurisdictions. We have assisted with multi-state audits, planning, and refund claims when federal/state non-conformity has produced unintended state tax results.

Legislative and Regulatory Advocacy

We have drafted federal legislation and model state tax legislation. With only minor modification, legislation that we have drafted has been introduced in Congress and has been adopted in several states. We have publicly and privately opposed certain regulatory changes and have written letters to decision-makers at numerous state tax agencies on behalf of clients urging implementation of statutory and regulatory measures.

Tax Credits and Incentives

We have assisted clients in obtaining state and local tax credits and incentives, including companies seeking to locate or expand in a particular jurisdiction and we can negotiate economic development incentives.

Residency Audits

Our attorneys have handled over a hundred residency audits. We understand the principles of domicile, statutory residency, and allocation of income, and utilize those principles to advocate for good results on behalf of clients. We also have experience with residency planning.

Unclaimed Property

We have guided clients undergoing multi-state unclaimed property audits and with unclaimed property planning issues.

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Astrid Pieron has more than 30 years of tax experience, which includes 25-plus years of focus on international taxation. Her practice covers the fiscal aspects of financial functions within multinational groups, tax optimization of mergers and acquisitions, structuring of financial products and investment funds, and general assistance to private equity deals. Astrid has had a primary geographic emphasis on Brussels and Luxembourg throughout her career, and together with Mayer Brown's Paris office (which won the 2006 Private Equity Award) she is advising on most of the significant private equity transactions that directly or indirectly are connected to the Benelux countries.

In addition to her transactional work, Astrid has substantial background in tax controversy matters, including assistance with tax litigation and negotiation of rulings with the tax authorities in Belgium and Luxembourg. Her experience in transfer pricing controversy includes examination, appeals and advance pricing agreements. She also counsels on the transactional aspects of transfer pricing, such as structuring European transfer pricing policy for US manufacturing groups operating in Europe. Astrid's related work involves advising on the conversion to commissionaire structures as well as on the fiscal optimization of financial vehicles within multinational enterprises (such as captive insurance companies, treasury centers, and investment funds).

Before joining and subsequently becoming a partner in Mayer Brown's Brussels office in 2007, Astrid practiced in Brussels and Luxembourg with two of the world's leading tax and accounting firms: Deloitte (2002 to 2006) and Arthur Andersen (1981 to 2002). Reflecting her multinational practice, she is fluent in French, Dutch, and English.

Education

- Expert Comptable /Conseil Fiscal IEC, 2007
- Ecole supérieure des sciences fiscales, 1988; grande distinction
- Université Catholique de Louvain, 1981; licence et agrégation en droit, Distinction

Admissions

- Brussels, Belgium, 2007

Activities

- Member of the Board of Union Wallonne des Entreprises
- Lecturer at the Mastère en Gestion Fiscale (Solvay Business School/ULB)

News & Publications

- "The OECD's Action Plan on Base Erosion and Profit Shifting," *Mayer Brown Legal Update*, 30 July 2013
- "A global financial transaction tax by any other name?," *Mayer Brown Legal Update*, February 2013
- "Global Energy Industry Review," *Mayer Brown Newsletter*, 19 June 2012
- "EU Focus—Where do We Stand on the Reshaping of the Energy Taxation Directive?," 19 June 2012
- "Is the "Magritte" Syndrome behind the EU FTT," *GFS News*, 17 January 2012
- "Luxembourg Issues Further Guidance on New Transfer Pricing Regime for Conduit Financing," *Mayer Brown Legal Update*, 15 April 2011
- "European Commission Proposes Common System for Corporate Income Tax Base Calculation," *Mayer Brown Legal Update*, 16 March 2011
- "AIFM Directive – Overview and Resource Webpage," *Mayer Brown Legal Update*, 4 March 2011
- "European Developments in Transfer Pricing," *Mayer Brown Legal Update*, 21 June 2010
- "Belgium, The Prime Location for Pan-European Pension Funds?," *Investment & Pensions Europe Magazine*, February 2010
- "L'impôt des non-résidents, 2010," *Larcier*, 2010
- "The Tax Esperanto?," 1 June 2009
- "Mayer Brown awarded "Belgium Transfer Pricing Firm of the Year"," 20 May 2009
- "Assess OR tax rules in advance and save money," 1 May 2009
- "Tax Controversy Update Comments on the OECD's "Transfer Pricing Aspects of Business Restructurings"," *Mayer Brown Legal Update*, 19 February 2009
- "Mayer Brown advises on the first German-Belgian consumer loan securitisation," 6 January 2009
- "Leading International tax adviser joins Mayer, Brown, Rowe & Maw in Brussels," *Mayer, Brown, Rowe & Maw LLP*, 21 May 2007
- "La Belgique, nouvelle terre d'accueil des fonds de pension internationaux?," February 2007
- "Belgium becomes more attractive for international pension funds," *Investment & Pensions Europe Magazine*, 2007
- "L'impôt des non-résidents, 2005," *Larcier*, 2005
- "The Savings directive , a business issue," August 2004
- "Les centres de trésorerie en Belgique," August 2003
- "Sous-traitance de la gestion et de l'administration des organismes de placement collectif: aspects fiscaux," *Revue Bancaire et Financière*, August 2002
- "L'impôt des non-résidents: analyse et commentaires," *Kluwer*, 2002
- "La distribution paneuropéenne des fonds d'investissement, obstacles et progrès," *Revue Bancaire et Financière*, 2002
- "Analyse van het Jaarverslag 1999-2000 van de Commissie voor het Bank- en Financiewezen," *CBF, liv. 10, 2-21*, 2000
- "L'Harmonisation fiscale européenne: pour bientôt?," *Bull Dr. Fisc. Fin. 2000, liv. 2, 2-6*, 1 January 2000
- "Le point sur le système X-N," *Bull. dr. fisc. fin. 1999, liv. 3, 2-11*, 1999
- "Credit derivatives: quel traitement fiscal?," *Bull. dr. fisc. fin. 1999, liv. 9, 2-4*, 1999
- "Apercu des aspects pratiques lies au passage a l'Euro au niveau juridique, comptable, fiscal et financier; 5, 3-9," *Bull. dr. fisc. fin. 1998, liv. 5, 3-9,*, 1998
- "Les instruments financiers dérivés. Concepts financiers, comptables, fiscaux et juridiques applicables en Belgique," *Ced.Samsom*, 1998

- "Obligations convertibles: apercu des aspects juridiques, comptables et fiscaux," *Bull. dr. fisc. fin. liv. 4, 2-11*, 1998
- "UEM et continuité des contrats," *Bull. dr. fisc. fin. 1998, liv. 5, 14-16*, 1998
- "Les revenus définitivement taxés: état des lieux," *R.G.F., pp. 321-326*, 1994
- "Les nouveaux instruments financiers. Notions financières, comptables et fiscales," 1994

Events

- European Tax Workshop, 25 October 2013
- China Tax Update, 12 July 2011
- Global Strategies Webinar Series: Current Strategies for Transfer Pricing Documentation, 25 May 2011
- Taxation of the Financial Services Industry—Views from Europe and the United States, 12 May 2011

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Shawn O'Brien is a Tax partner in the Houston office. Shawn represents clients in all types of tax disputes with taxing authorities on international, federal and state levels. He routinely advises clients on various tax issues during tax examinations, in administrative appeals and as an advocate in trial and appellate litigation before the US Tax Court, US District Courts and US Court of Federal Claims. Shawn's tax controversy and litigation experience spans a broad range of areas, including transfer pricing controversies, debt v. equity issues, international withholdings, advance pricing agreements, "tax shelter" disallowances, estate and gift tax valuations, research and development tax credits, excise taxes, and changes in accounting methods.

Shawn also advises foreign and domestic corporations, partnerships, and LLCs seeking corporate and tax advice in connection with various types of foreign and domestic transactions, including mergers and acquisitions, restructurings, divestitures, leveraged buyouts, structured financings and oil and gas transactions.

Shawn is particularly focused on a variety of tax issues facing the energy industry including tax controversy, restructuring, acquisition and disposition of energy assets. Shawn serves as Chair of the Energy and Natural Resources Committee of the State Bar of Texas Tax Section.

Education

- New York University School of Law, LLM Taxation
- Loyola Law School, JD *Loyola Law Review,* Case Note Editor
  Loyola Moot Court

Admissions

- Louisiana
- Texas
- US Tax Court
- US District Court for the Southern District of Texas
- US Court of Federal Claims

News & Publications

- "Louisiana Tax Amnesty Program Seeks To Attract $1.4 Billion in Past-Due Taxes," *Bloomberg BNA Daily Tax Report (subscription required)*, 18 September 2013
- "Hydraulic Fracturing Services Are Qualifying Income for MLPs," *Tax Notes Today*, 21 August 2013

- "Mayer Brown strengthens Tax practice in Houston with arrival of partner Shawn O'Brien," 16 April 2012

Events

- "Direct and Indirect Tax Developments & Transaction Tax Structures in the LATAM Energy Sector," Latin American Tax Seminar, 20 November 2013
- Two-Part Energy Tax Workshop: US Companies Doing Business in Brazil, Mexico, Venezuela and Colombia, 20 November 2013
- European Tax Workshop, 25 October 2013
- "Defending the 199 Deduction in Audit and Appeals," Dallas Chapter of Tax Executives Institute Technical Session, 17 September 2013
- "Defending the 199 Deduction in Audit and Appeals," Houston Chapter of Tax Executives Institute IRS Administrative Roundtable, 4 September 2013
- The Impact of Foreign Expansion - International Taxation and Transfer Pricing, 23 July 2013
- "Tax Controversy Issues Arising from Capitalizing Foreign Operations," IADC (International Association of Drilling Contractors) International Tax Seminar, 7 June 2013
- Tax Executives Institute Current Topics in Tax Controversy, 30 May 2013
- "Overview and Updates of US Tax Compliance of International Transactions; Compliance Reporting and Withholding Issues for US Sourced FDAP and ECI ," Houston Chapter of Tax Executives Institute 25th Annual Tax School, 10 May 2013
- "Managing IRS Interviews, Site Tours, Transaction & Issue Presentations," Houston Chapter of Tax Executives Institute IRS Administrative Roundtable, 1 May 2013
- "Internal Reorganizations and Dispositions Involving US Subsidiaries: Traps for the Unwary," American Petroleum Institute 79th Annual Federal Tax Forum, 29 April 2013
- "Economic Substance and Related Doctrines in International Transactions," Internal Revenue Service – Houston Chapter of Tax Executives Institute International Tax & Audit/Appeals Conference, 8 November 2012
- Brazilian Energy Tax Seminar, 12 October 2012
- US Companies Doing Business in the Brazilian Energy Sector, 11 October 2012
- "The Relationship Between Economic Substance and IRC § 482 in Transfer Pricing Litigation," Internal Revenue Service – Houston Chapter of Tax Executives Institute Training, 28 June 2012
- "Accuracy Related Penalties: When Being Wrong is Really Wrong," Houston Chapter of Tax Executives Institute Tax School, 5 May 2012
- "Ethical Issues Facing the Tax Community," American Petroleum Institute 77th Annual Federal Tax Forum, 10 May 2011

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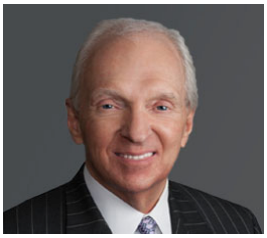
Edward C. Osterberg Jr.



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"Ed Osterberg impresses the legal market with his grasp that goes beyond the technicalities of the matter, especially in international tax law, where he is extremely impressive, and in M&A, where he is a leading transactional lawyer." Chambers USA

Ed Osterberg is a Tax Transactions & Consulting partner in Mayer Brown's Houston office. His extensive experience includes all areas of business income taxation, with emphasis on corporate and partnership taxation and international transactions.

Ed has advised corporate and individual clients on the federal tax consequences of various transactions, including mergers and acquisitions; tax-free reorganizations; corporate spin-offs and other divestitures; partnerships; foreign operations, including cross-border joint ventures with non-US partners; and inbound investment into the United States by non-US investors.

Experience

International Transactions

- Advised the Government of the United Republic of Tanzania on the structure of its petroleum revenue taxation
- Advised one of the largest US power companies on a proposed joint venture with a European company to combine worldwide (non-US) energy assets
- Advised one of North America's leading providers of natural gas infrastructure in connection with its tax-advantaged repatriation of profits from Canadian subsidiaries
- Advised a Norwegian company on its US$3.1 billion sale of an interest in oil and gas properties offshore Brazil to a Chinese buyer
- Advised a Chinese company on its multi-billion dollar acquisition of an interest in oil and gas properties offshore Brazil from a Spanish company
- Advised an international private equity firm on the sale of Colombian natural gas distribution operations
- Advised on US tax aspects of formation and operation of Dubai Mercantile Exchange
- Advised on US tax aspects of US operations of a European consortium
- Structured purchase of a US company with oil and gas assets in Kazakhstan by a Chinese buyer
- Served as lead US tax lawyer on a multi-billion dollar acquisition of oil and gas properties offshore Brazil
- Advised on the $4.4 billion restructuring of a joint venture between a major oil company and a power company covering projects in the US and Canada

- Advised a nuclear plant supplier on an application for a Pre-Filing Agreement with the Internal Revenue Service to the effect that the company does not have a permanent establishment in the US
- Participated in tax planning and structuring for power projects in countries around the globe, including: Argentina, Bolivia, Brazil, China, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Honduras, India, Mexico, Mozambique, Panama, Peru, the Philippines, South Africa, Trinidad and Tobago, Turkey, and the United Kingdom

Mergers and Acquisitions

- Advised a Canadian subsidiary of a UK company on multiple acquisitions of US power projects
- Served as lead tax lawyer on consolidation of three oilfield service companies
- Developed structures for combination of an oilfield service corporation with a publicly traded partnership
- Served as lead US tax lawyer in the $4 billion acquisition of Canadian energy company using exchangeable shares
- Advised a US global engineering, construction, and service company on a possible inversion as a European. company and on the restructure of its worldwide cash management pools to resolve US tax issues

Divestitures

- Advised a publicly-traded Canadian oil and gas exploration and production company on the US tax consequences of its spinoff of its energy operations in Latin America
- Served as lead tax lawyer to a publicly-traded entertainment company on its split-off from its publicly-traded parent corporation
- Structured sale of a Canadian company by a US limited liability company to qualify for treaty relief in Canada
- Structured sales of US and foreign oilfield service companies to achieve long-term capital gain treatment
- Served as lead tax counsel to a major energy company in connection with its disposition of a major electric utility company

Education

- Northwestern University School of Law, JD, cum laude
- Southern Methodist University, LLM Taxation
- Northwestern University, BA

Admissions

- Texas
- Illinois

Activities

- President-Elect/Executive Committee: International Fiscal Association USA Branch
- Fellow: American College of Tax Counsel
- Adjunct Professor, University of Houston Law Center

- Advisory Board and Contributing Editor: International Tax Journal
- Member: Section of Taxation, American, Texas, and Houston Bar Associations
- United States Reporter: International Fiscal Association's Congresses in Sydney, Australia on taxation of the extractive industries, and in Barcelona, Spain on confidentiality in tax matters
- Former Chair: Committee on U.S. Activities of Foreigners and Tax Treaties, Section of Taxation, American Bar Association; International Tax Committee, State Bar of Texas
- Former President: International Tax Forum of Houston
- Former President: Section of Taxation, Houston Bar Association
- Founder: State Bar of Texas International Tax Institute, Dallas, Texas
- Trustee: The Houston Symphony
- Former Director: Chapelwood United Methodist Church

News & Publications

- "Hydraulic Fracturing Services Are Qualifying Income for MLPs," *Tax Notes Today*, 21 August 2013
- "Law Firms and Laterals Keep Houston Market Humming," *The Am Law Daily*, 13 May 2013
- "Mayer Brown adds Edward C. Osterberg, Jr. as partner in Tax Transactions & Consulting practice in Houston," 6 May 2013
- "Partnership Classification Election Results in Worthless Security Loss," *38 International Tax Journal 25*, March-April 2012
- "Partnership Splitters," *37 International Tax Journal 6*, November-December 2011
- "New Regulations Classify Series Companies," *37 International Tax Journal 5*, January - February 2011
- "Sales Income Derived Through a Partnership: When Is It Subpart F Income?," *36 International Tax Journal 17*, May - June, 2010
- "The Use of Series Companies in International Tax Planning," *35 International Tax Journal 13*, November - December 2009
- "The New Regulations Under Code Section 1446," *35 International Tax Journal 13*, March - April 2009
- "The Canadian Protocol and Limited Liability Companies," *43 International Tax Journal 5*, March - April 2008
- "US and Canadian Tax Considerations for Acquiring Canadian Income Trusts," *Tax Notes International*, 10 September 2007
- "The New Regulations Under Code Sec. 987: Application to Partnerships," *International Tax Journal*, January - February 2007
- "Special Issues in International Mergers & Acquisitions: A Buyer's Perspective," *Center for International Tax Education*, June 2006
- "The Regulations Under Code Section 7874(g)," *6 Journal of Taxation of Global Transactions 15*, Spring 2006
- "Tax Considerations in Doing Business in India, Korea and Thailand," *Georgetown University International Tax Institute*, March 2006
- "An Annotated Dividend Reinvestment Plan," *5 Journal of Taxation of Global Transactions 13*, Fall 2005
- "Code Section 965 and Partnerships," *5 Journal of Taxation of Global Transactions 23*, Spring 2005
- "International Tax Provisions of the America Job Creation Act of 2004," *State Bar of Texas*, April 2005
- "Section 965: Temporary Dividends Received Deduction," *Houston Tax Roundtable*, April 2005
- "Business-Related Tax Provisions of 2004 Legislation," *Wednesday Tax Forum*, 1 June 2004

- "Outbound Cross-Border Acquisitions," *International Fiscal Association USA Branch*, February 2004
- "Using the Brown Group Regulations to Minimize Subpart F Income," *1 Journal of Taxation of Global Transactions 39*, October 2003
- "Basic U.S. Tax Considerations in Buying or Selling a Non-U.S. Business," *Tax Notes*, 2 June 2003
- "U.S. Tax Consideration in Buying or Selling a Non-U.S. Business," *International Fiscal Association USA Branch*, April 2003
- "International Joint Ventures: Basic Tax Goals and Structures," *Tax Notes International*, 30 April 2001
- "C'omo Hacer Negocios Con Tejas," *Chamber of Commerce, Monterrey, Mexico*,

Events

- Two-Part Energy Tax Workshop: US Companies Doing Business in Brazil, Mexico, Venezuela and Colombia, 20 November 2013
- European Tax Workshop, 25 October 2013