

U.S. Taxation of Mergers & Acquisitions
McDermott, Will & Emery, Chicago, IL
April 30 & May 1, 2014

Chair: Rob Clary, McDermott, Will & Emery, Chicago

Wednesday, April 30

8:00 am **Registration and Continental Breakfast**

8:30 am Overview and Introduction
Rob Clary, McDermott, Will & Emery, Chicago

8:45 am Overview of Taxation of Mergers and Acquisitions

- Structuring the deal
- Overview of taxable and tax free acquisitions
- Examples of typical transactions under Subchapter C and alphabetical classes of reorganizations
- Role of the tax director in corporate M&A deals
- Frequently encountered traps and opportunities

Rob Clary, McDermott Will & Emery, Chicago
Levi Kahn, McDermott Will & Emery, Chicago

10:00 am **Refreshment Break**

10:15 am Consolidated Return Issues in Acquisitions and Dispositions

- Affiliation and consolidated group continuation
- Breaking the consolidated affiliated group
- SRLY rules for newly-acquired group members
- Excess loss accounts
- Unified loss rule

11:15 am Contingent Liabilities in Merger and Acquisition Transactions

- Taxable asset acquisitions
- Comparison of book versus tax liabilities
- Impact on buyer and seller
- Timing issues.
- Tax treatment of deferred revenue

12:15 pm **LUNCHEON**

- 1:15 pm Strategies for Making a Sec. 338(h)(10) Election
- When can a stock purchase be treated like an asset purchase?
 - What are the benefits of electing asset sale treatment?
 - Considerations for buyer - considerations for seller
- Roger Jones, McDermott Will & Emery, Chicago**
Hassen Al-Shawaf, McDermott Will & Emery, Chicago
- 2:15 pm Use of a Sec. 338 (h) (10) Election in an IPO
- Structuring and capturing the value added by a 338(h)(10) election in an IPO
 - Impact of step transaction
 - “Claw back” or tax sharing agreements
- KPMG**
- 2:45 pm **Break for Refreshments**
- 3:00 pm Conducting Tax Due Diligence
- Indemnification issues
 - Key tax issues in reviewing acquisition documents
 - Allocation of purchase price
 - Tax sharing agreements
 - Target’s tax elections
 - Foreign tax credit documentation and carryover issues
 - A check list to get you through key aspects of tax compliance.
- KPMG**
- 4:15 pm Deductibility of Acquired Corporate Tax Losses & Other Attributes
- Treatment of net operating loss carryovers
 - Limitations under Section 382
 - NUBIGs and NUBILs
 - RBIGs and RBILs
 - Treatment of excess R&D and FTCs under Section 383.
- Steve Garden, Mayer Brown LLP, Chicago**
- 5:30 pm **Conference Adjourns for the Day**

Thursday, May 1

- 8:00 am **Continental Breakfast**
- 8:30 am Special Tax Accounting Issues in Reporting the Results of Mergers, Acquisitions and Dispositions - ASC 805 and ASC 350
- Tax accounting issues affecting intangibles, including goodwill, and impact on the income tax provision
 - Consequences of making a basis step-up election under Sec. 338 – interrelationship with purchase accounting
 - Counter-intuitive effective tax rate impact on accounting statements

- Understanding IFRS convergence issues
William McAlpine, PricewaterhouseCoopers, Chicago

9:45 am **Refreshment Break**

10:00 am Review of Recent M&A Transactions

- Developments in tax-free-spin-offs
- Cross-border acquisitions and financings
- Innovative tax-free reorganizations
- Special distributions
- Partnerships in M&A

Barry Quirke, McDermott Will & Emery, Chicago

Genevieve Tokic, McDermott Will & Emery, Chicago

11:15 am Compensation Issues

- Review of deduction provisions affecting stock options and other incentive pay in merger and acquisitions
- Latest developments in compensation tax issues
- Special issues involving mergers and acquisitions
- Interrelationship with accounting rules under IFRS

Dennis Minich, WTAS, Chicago

12:30 pm **LUNCHEON**

1:30 pm M&A Issues Involving Partnerships, LLCs and Hybrids

- Check the box regulations
- Single-member LLCs
- Use of LLC in corporate transactions
- Joint ventures and strategic alliances
- Partnership tax issues under Secs. 721(c) and (d)

Gary Karch, McDermott Will & Emery, Chicago

2:30 pm **Refreshment Break**

2:45 pm Special Tax Issues in Outbound M&A Transactions

- Structuring a taxable versus a tax free acquisition under Sec.367(a)
- Section 7874, including notice 2009-78 and Treasury Regulation 1.7874-2T
- Discussion of Section 367(a)(5) & Proposed Treasury Regulations 1.367(a)-7
- Analysis of the Treasury modifications to the check-the-box regime
- U.S. tax consequences of transfers of tangibles and intangible assets under Sections 367(a) and 367(d)

Kristen Hazel, McDermott Will & Emery, Chicago

Sandra McGill, McDermott Will & Emery, Chicago

3:30 pm Special Tax Issues in Inbound M&A Transactions

- Application of section 367(b) to mergers and acquisitions of foreign companies - basis adjustments under Notice 2005-70
- Avoiding earning stripping limitation under Sec. 163 (j)
- Understanding the U.S. tax consequences of making a section 338 election

- Using an LLC or other pass-through (check-the-box) entity
- U.S. tax issues involved in selling U.S. and foreign business assets to a foreign purchaser – liquidation of a U.S. subsidiary
- Understanding the Limitation on Benefit (LOB) Provision in the U.S. Model Income Tax Treaty

KPMG

4:45 pm **Conference Ends**

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