

The Defined Outcome Series

Comparing the tax treatment to investors of structured products, ETNs, UITs, and ETFs

Remmelt Reigersman

(415) 874-4259

rreigersman@mayerbrown.com

Brennan Young

(212) 506-2691

byoung@mayerbrown.com

February 10, 2026

Agenda

- Overview of the Flavors
 - Structured Notes
 - Exchange Traded Notes
 - Unit Investment Trusts
 - Defined Outcome ETFs



Overview of the Flavors

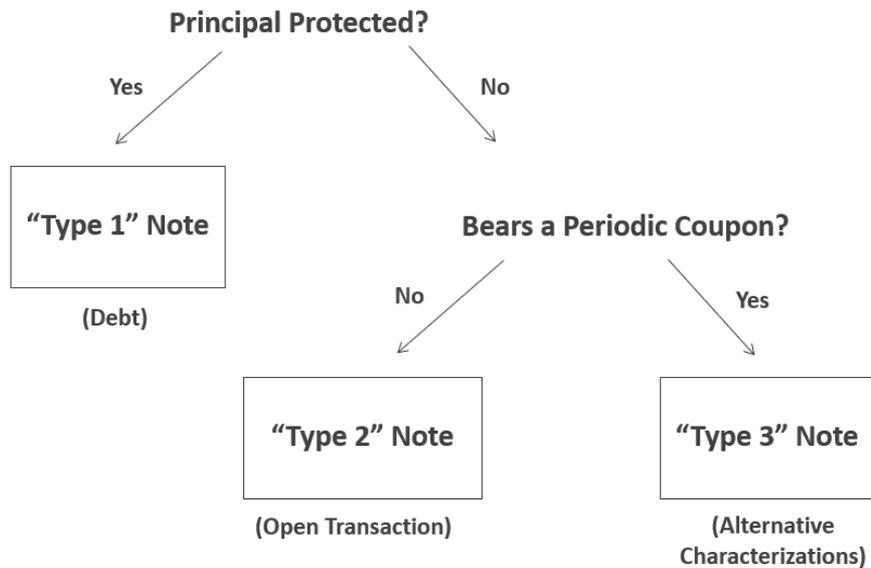
Structured Notes



In General

- Structured notes:
 - may be principal protected or not
 - are linked to an underlying
 - equities, commodities, currencies, rates etc.
 - may include a yield/coupon (contingent or fixed)
 - may provide for a leveraged exposure or a digital exposure
 - subject to credit risk of issuer
- How to determine the tax treatment of structured notes?

Keeping it Simple



Current US Tax Considerations

- Type 1 Notes: Debt. Categories within the classification
 - Fixed rate debt, variable rate debt, contingent payment debt, and sticky facts for being one or the other (e.g., leveraged steepeners)
 - OID (resulting from actual discount or otherwise (e.g., fixed-to-floaters))
- Type 2 Notes: open transaction/prepaid derivative contract
 - Notice 2008-2
- Type 3 Notes: alternative characterizations
 - unit consisting of components: debt/deposit plus a put option
 - a single instrument: income-bearing derivative contract
- Special Considerations:
 - foreign currencies (Rev. Rul. 2008-1)
 - expectations (risk of loss) vs. legal entitlements

Type 1 Notes (Principal Protected)

- Alternative Characterizations: Fixed rate debt, variable rate debt, contingent payment debt.
- Variable rate debt instruments (VRDIs) under Regs. Section 1.1275-5
 - Interest payable at “qualified floating rate” or single “objective rate” – OID? ; special restrictions for fixed-to-floaters; “significant front-loading or back-loading of interest”
 - Failure to meet definition means the debt instrument is a CPDI
 - Generally, interest taxed as ordinary income and gain or loss is capital (long term if held for more than 1 year)
- Contingent payment debt instruments under Regs. Section 1.1275-4
 - Regulations require current accrual of OID based on hypothetical debt instrument (OID income, possibly without cash receipt)
 - “Comparable” yield: yield at which the issuer would issue fixed rate straight debt,
 - Projected payment schedule: fixed payments plus estimates of contingent payments (must produce the comparable yield)
 - Positive or negative adjustments to OID as contingencies become known
 - Gain on sale is ordinary income

Type 2 Notes (No Principal Protection, No Periodic Coupon)

- Treated as open transactions for tax purposes—prepaid forward contract, derivative contract or single financial instrument
 - “Wait and see”
 - Capital gain or loss (long term if held for more than 1 year)
- Notice 2008-2: government considering tax policy issues and requested comments on whether parties should be required to accrue income/expense during term on prepaid forward contracts
 - Considering whether parties should be required to accrue income during the term
 - Nothing has happened

Type 3 Notes (No Principal Protection, Periodic Coupon)

- Alternative Characterizations
 - A unit consisting of components: debt/deposit plus a put option
 - Interest on the debt/deposit taxed as ordinary income
 - Put premium deferred and treated as short term capital gain (or added to basis in case of physical settlement)
 - A single instrument: Income-bearing derivative contract
 - Generally, “interest” taxed as ordinary income and gain or loss is capital (long term if held for more than 1 year)
- Withholding tax on notes paying US-source “interest”?
 - U.S. imposes a 30% withholding tax on payments of U.S. source “FDAP” income (interest, dividends, etc.) to foreign investors
 - Portfolio interest exception
 - Capital gains of foreign investors generally exempt

A background image of a candlestick chart with red and teal bars on a dark blue grid.

Exchange Traded Notes

What are ETNs?

- ETN = Exchange Traded Note
 - For tax purposes, an ETN is the same as a structured note except it is listed on a national securities exchange
 - Subject to credit risk of issuer
- ETNs typically are non-principal protected, often (1) have long maturities (e.g., 20 years from original issuance) and (2) do not provide for periodic payments
 - Some ETNs may provide for periodic payments representing the value of any dividends that a hypothetical holder of the securities included in the underlying index would receive

US Tax Considerations for of Exchange Traded Notes

- Generally, the same tax treatment as “type 2” structured notes
 - “Wait and see” (except for periodic payments, if any)
 - Capital gain or loss (long term if held for more than 1 year)
- For non-US investors, potential section 871(m) withholding
 - Withholding on “dividend equivalent amounts,” generally with respect to delta-one instruments (for now)
 - ETN flavors: 3x ETNS, inverse ETNs, commodity ETNs
 - Exception: Qualified Indices
 - Broad based index exception
 - Non-US index exception
 - DTCC attestation form

A background image of a candlestick chart with red and teal bars on a dark blue grid.

Unit Investment Trusts

What are UITs?

- Unit investment trusts (UITs) buy and hold a fixed portfolio of stocks, bonds or other securities (e.g., flex options)
 - Portfolio may consist of a wide range of securities, including structured notes
- A UIT makes a one-time offering of only a specific and fixed number of redeemable securities called “units”
 - Investors receive a share of a UIT’s income through distributions
 - Payments can occur monthly, quarterly, semiannually or at termination.
- A UIT has a stated date for termination
 - Investors receive a proportionate share of the net proceeds of the UIT (physical settlement may be possible)
 - Term may vary from one year to 30 years depending on the underlying portfolio.

Tax Classification of UIT

- UITs are typically organized as trusts under state law and obtain pass-through tax treatment by qualifying as regulated investment companies (“RICs”) under the Code
 - Must meet the RIC requirements (next month’s presentation)
- Investor treated as equity owner

Taxation of UIT Holders

- Distributions out of the UIT's earning and profits ("E&P") generally taxable as ordinary income
 - Possible to get flow-through treatment on capital gains and dividend income
 - Distribution in excess of UIT's E&P generally treated as return of capital to the extent of basis
 - Thereafter, distribution treated as gain from sale or exchange
- Capital gain or loss (long term if held for more than 1 year)
- Generally, foreign investors are subject to a 30% U.S. withholding tax on dividends paid by the UIT treated as a RIC
 - Non-U.S. investors may get withholding exemption for "interest-related dividends" and "capital gain dividends"

A background image of a candlestick chart with red and teal bars on a dark blue grid.

Defined Outcome ETFs or Structured ETFs

Defined Outcome ETFs – Common Structures

- Income ETFs
 - E.g., autocallable or option writing strategies
- Buffered ETFs
 - capped upside
 - downside protection (up to 100%)
- Dual Directional ETFs
 - positive (limited) return in certain upside and downside scenarios (with downside exposure)
- Common underliers
 - SPX, NDX, RTY, EFA, EEM, BTC

Tax Classification of ETFs

- ETFs are typically organized as trusts under state law and obtain pass-through tax treatment by qualifying as regulated investment companies (“RICs”) under the Code
 - Must meet the RIC requirements (next month’s presentation)
- Investor treated as equity owner

Taxation of ETF Holders

- Distributions out of the ETF's earning and profits ("E&P) generally taxable as ordinary income
 - Possible to get flow-through treatment on capital gains and dividend income
 - Distribution in excess of ETF's E&P generally treated as return of capital to the extent of basis
 - Thereafter, distribution treated as gain from sale or exchange
- Capital gain or loss (long term if held for more than 1 year)
- Generally, foreign investors are subject to a 30% U.S. withholding tax on dividends paid by the ETF treated as a RIC
 - Non-U.S. investors may get withholding exemption for "interest-related dividends" and "capital gain dividends"

The Defined Outcome Series

UPCOMING . . .

Tuesday, March 3, 2026 – Tax structuring issues for entities taxed as registered investment companies (RICs, UITs and ETFs)

Tuesday, March 24, 2026 – Understanding the regulation of SMAs

Tuesday, April 14, 2026 – Comparing disclosure and other requirements applicable to ETFs with those applicable to structured notes and ETNs

Tuesday, May 5, 2026 – Considerations for index providers to, or hedge providers to, ETFs

United States:

12:00 p.m. – 12:40 p.m. EST

11:00 a.m. – 11:40 a.m. CST

10:00 a.m. – 10:40 a.m. MST

9:00 a.m. – 9:40 a.m. PST

Europe:

5:00 p.m. – 5:40 p.m. GMT

6:00 p.m. – 6:40 p.m. CET

Panelists



Rimmelt Reigersman

Partner, Northern California
rreigersman@mayerbrown.com
+1 415 874 4259

- Rimmelt concentrates his practice on federal and international tax matters.
- He advises on a wide variety of sophisticated capital markets transactions and represents issuers, investment banks/financial institutions and investors in financing transactions, including public offerings and private placements of equity, debt and hybrid securities, as well as structured products.
- Rimmelt's areas of experience also include restructurings (both in and out of bankruptcy), debt and equity workouts, domestic and international mergers, acquisitions, reorganizations and joint ventures.



Brennan W. Young

Partner, Charlotte
byoung@mayerbrown.com
+1 212 506 2691

- Brennan has a broad-based transaction-oriented US federal income tax practice focused on structuring and negotiating the tax aspects of securities offerings including collateralized loan obligations, collateralized fund obligations, and other structured finance products, insurance-linked securities offerings (such as catastrophe bonds and reinsurance side-cars), derivatives and other bespoke products.
- He also advises on the US federal income tax considerations related to domestic and international mergers, acquisitions, reorganizations, and reinsurance transactions.
- Brennan is a frequent speaker on various topics with the Practising Law Institute and on the advisory board of the Journal of Taxation of Financial Products.



Americas | Asia | Europe | Middle East

mayerbrown.com

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. "Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown. © Mayer Brown. All rights reserved.