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MAYER BROWN CAPITAL MARKETS

TAXQUARTERLY

DON'T TAX YOU. DON'T TAX ME. TAX THAT FELLOW BEHIND THE TREE.*

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Editor's Note

As *CMTQ* hits the newsstands, a substantial part of the US government is on hold because of the failure to pass various appropriations bills for the 2019 fiscal year. At the Internal Revenue Service ("IRS"), the agency near and dear to *CMTQ*'s heart, only essential workers are at their desks, although, since filing season started, many more IRS staff have been taken off furlough. Unfortunately, the ground rules for government shutdowns are not well-known outside the beltway, so tax advisers do not really know what is and isn't being worked on.

Always trying to help, *CMTQ* looked into the rules behind government shutdowns; it should surprise no one that Treasury and IRS each have a contingency plan (several, in fact) for a "lapsed appropriations" situation. The plans are driven by 31 U.S.C. §1341 (the "Antideficiency Act"), which prohibits an officer or employee of the United States from, among other things, (i) making or authorizing an expenditure or obligation exceeding an amount available in an appropriation and (ii) involving the government in a contract or obligation for the payment of money before an appropriation is made, unless authorized by law. Penalties for knowingly and willfully violating the statute are severe: not more than two years in jail and/or a fine of not more than $5,000.

The IRS plan for other-than-filing season shows nearly 80,000 employees pre-shutdown, and about 12.5% of those are exempt from furlough under the plan. The IRS plan for filing season (released on January 15) ups the number of exemptions to nearly 60% of the IRS workforce. The commissioner, of course,

In This Issue

* As described in Issue #1, this quote is attributed to, among others, Sen. Russell Long (D., LA).

cannot be furloughed because he is a presidential appointee. Also, the Tax Cuts and Jobs Act ("TCJA") provided for two years of funding (fiscal 2018 and 2019) for certain TCJA-related activities; therefore, IRS employees working on these activities are all excepted. Buried deep in the IRS plan are the TCJA exceptions covering things such as the Code section 9651 repatriation rules (final regulations were issued on January 15), Code section 199A implementation (final and proposed regulations were issued on January 18th) and the "qualified opportunity zone" rules under new Code section 1400Z, among others.

The Treasury plan exempts Tax Policy staff to the extent that they are working with the president and Treasury secretary to develop policies to restore appropriations, including tax provisions; provide revenue estimates; and perform related activities.

While the US government partially shut down, beginning December 22, we are happy to report that tax advisers in the United States spent their holidays digesting more than 1,255 pages of proposed regulations issued before the shutdown, pursuant to the TCJA. These included Code section 163(j) regulations (439 pages), the Code section 245 and 267A anti-hybrid regulations (154 pages), and, a little farther afield, the Code section 951A GILTI regulations (157 pages), the Code section 59A BEAT regulations (193 pages), and regulations on foreign tax credits and the TCJA (312 pages). And, as the TCJA begat proposed regulations, the proposed regulations begat accounting and law firm client alerts, which, at this point, surely number in the hundreds. It all made for a fun holiday season, at least for tax advisers. It was not so happy for their clients who have realized that the TCJA is really changing things particularly as it relates to the effect of debt and the deductibility of interest. How long that takes for the market to digest is another story.

This edition of *CMTQ* covers an exception from the base erosion anti-abuse tax (the "BEAT") for internal TLAC, the pass through of REIT dividends to mutual fund shareholders under Code section 199A, the elimination of FATCA's gross proceeds withholding requirement, the US government's attempt to coordinate efforts around "qualified opportunity zones" in a new White House Opportunity and Revitalization Council, and more. We hope you enjoy it.

Proposed BEAT Regulations: Exception for Internal TLAC

When a non-US bank has a US corporate subsidiary it typically funds the subsidiary with debt. In computing its taxable income, the subsidiary is generally entitled to deduct the interest on the debt. Under US Federal Reserve Board rules, a foreign corporation that is a "global systemically important banking organization" or "GSIB," is required to use a certain amount of "total loss absorbing capital" or "TLAC" to fund its US "intermediate holding company" or "IHC." TLAC is long-term debt with characteristics specified by the Federal Reserve. The concept is that TLAC can be "bailed-in" in case of financial trouble to recapitalize the IHC. In Rev. Proc. 2017-12 the IRS said it would not challenge the treatment of such TLAC as debt for federal income tax purposes thus permitting an IHC to deduct interest on the TLAC. The TCJA, however, added the section 59A base erosion anti-abuse tax ("BEAT") to the Code. Pursuant to BEAT, in the case of certain large taxpayers,

1 All section references herein refer to the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder.

interest and other payments to a related non-US party ("base erosion payments") may be added back to determine the tax base for a 10% minimum tax. See Code section 59A. There has been a concern that interest payments on TLAC paid to a foreign corporate parent could be subject to add-back under BEAT.

The BEAT proposed regulations issued in December, however, provide that interest payments on TLAC required by the Federal Reserve are not considered "base erosion" payments for BEAT purposes. The rule would be effective as of January 1, 2018, the effective date of the BEAT.[2]

Accordingly, US IHCs will still be able to deduct interest on Federal Reserve required TLAC. This could obviate the need to significantly restructure their liabilities, for example, by repaying internal debt with obligations issued in the market.

Mutual Funds That Hold REIT Shares – Are the Fund Dividends Eligible for the 20% Code Section 199A Deduction?

The TCJA allows an individual shareholder a 20% Code section 199A "qualified business income" deduction for dividends received from a real estate investment trust ("REIT"). When the statute was drafted, no specific provision was included for a mutual fund (i.e., a regulated investment company under Code section 851) that owns REIT shares to pass through the Code section 199A deduction to the mutual fund's individual shareholders. In some cases, mutual funds have only a fraction of their investments in REIT shares. For example, there are currently 32 REITs in the S&P 500 index (and therefore in S&P 500 index funds). On the other hand, certain mutual funds invest all or almost all of their money in REIT shares.

Since the TCJA was enacted there has been a concern that mutual funds are not able to pass through REIT dividends as such that would be eligible for the 20% deduction. However, on January 18, 2019, the IRS released a package of final regulations and additional proposed regulations under Code section 199A, clarifying this issue.[3] The final regulations do not address the issue of whether RICs can pass through qualifying REIT dividends to their shareholders. However, the new set of proposed regulations specifically address this issue, providing that RICs may pass through Code section 199A dividends to non-corporate shareholders under certain circumstances. In general, shareholders of the RIC would have to meet the 45 day holding period for section 199A eligibility prescribed in the final section 199A regulations.[4] A RIC would compute and report section 199A dividends based on the rules for capital gains in section 852(b)(3) and exempt-interest dividends in section 852(b)(5). The amount of a RIC's section 199A dividends for a taxable year would be limited to the excess of the RIC's qualified REIT dividends for the taxable year over expenses.

2 In another helpful clarification, the proposed regulations also provide that payments to a US branch of a non-US taxpayer should not be treated as a base erosion payment under these rules. For a more detailed discussion of the proposed regulations, please see our article in Tax Notes titled "BEATen Up (Again): The IRS Issues Proposed BEAT Regulations" (January 7, 2019).

3 The final regulations are available at https://www.irs.gov/pub/irs-drop/td-reg-107892-18.pdf, and the proposed regulations are available at https://www.irs.gov/pub/irs-drop/reg-134652-18.pdf.

4 45 days or less (taking into account the principles of section 246(c)(3) and (4)) during the 91-day period beginning on the date which is 45 days before the date on which the share becomes ex-dividend.

Proposed regulations state that this rule applies to taxable years ending after the date the proposed regulations are published as final, but that taxpayers can rely on the rules until that time.

During Q4 2018 there were other also favorable signs for the pass-through. Last fall, then chair of the House Ways and Means Committee Kevin Brady released the Tax Technical and Clerical Corrections Act, which included a provision that provides for pass-through of REIT dividends where the REIT shares are held by a mutual fund.[5] The Joint Committee on Taxation explanation of the TCJA (also known as the "Blue Book") released in December also said the pass-through of Code section 199A dividends by RICs should be the right result.[6]

The issue is of some import during tax reporting season. Generally speaking Form 1099 must be given to recipients by January 31, and presumably IRS felt a need to publish clarification as soon as possible, despite the government shutdown. Mutual funds will likely be comforted by the issuance of the proposed regulations in time for the January 31st deadline.

Proposed FATCA Regulations: Gross Proceeds Is Gone!

On December 13, 2018, the IRS released proposed regulations amending regulations implementing legislation commonly known as the Foreign Account Tax Compliance Act (the "Proposed Regulations").[7] The Proposed Regulations are significant for capital markets lawyers because they eliminate FATCA withholding on payments of gross proceeds, which affects most tax disclosures for debt and equity offerings. In addition, the Proposed Regulations further defer FATCA withholding on "foreign passthru payments." The Proposed Regulations also make a number of other changes to the FATCA regulations and related regulations.

Gross proceeds withholding eliminated. FATCA generally imposes a 30% withholding tax on "withholdable payments" made to certain foreign financial institutions ("FFI") and certain non-financial foreign entities. The Code defines "withholdable" payment to mean (a) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gain, profits and income from US sources, and (b) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends. The IRS received comments when implementing FATCA that withholding on gross proceeds would require significant efforts by withholding agents. In 2016, the IRS released regulations that

5 The provision would add a new sub-section (10) to Code section 852(b) permitting a RIC shareholder to take into account "…the amount reported by the company… as being attributable to qualified REIT dividends received by the company." The provision would also apply to "qualified publicly traded partnership income' which too is eligible for the 20% Code section 199A deduction. The provisions would be effective as though included in the TCJA.

6 The Blue Book has the following favorable language: "It is intended that in the case of an individual shareholder of a RIC that itself owns stock in a REIT or interests in a publicly traded partnership, the individual is treated as receiving qualified REIT dividends or qualified publicly traded partnership income to the extent any dividends received by the individual from the RIC are attributable to qualified REIT dividends or qualified publicly traded partnership income received by the RIC." Joint Committee on Taxation, General Explanation of Public Law 115-97 (December 2018), available at https://www.jct.gov/publications.html?func=startdown&id=5152.

7 The Proposed Regulations are available at https://www.irs.gov/pub/fatca/NPRM%20re%20Sections%201441-1474%20Regulations%202018%201212.pdf.

delayed FATCA withholding on gross proceeds until 2019. The preamble to the Proposed Regulations states that the IRS believe, in light of current compliance with FATCA by foreign governments and institutions, that withholding on payments of gross proceeds is no longer necessary to ensure cooperation with the implementation of FATCA. Accordingly, the Proposed Regulations withdraw FATCA withholding on gross proceeds. The Proposed Regulations state that withholding agents can rely on the Proposed Regulations until final regulations are issued.

Withholding for foreign passthru payments further deferred. Generally, an FFI that has an agreement with the IRS is required to withhold on any passthru payments made to its recalcitrant account holders and to FFIs that are not compliant with FATCA (non-participating FFIs). “Passthru payment” is generally defined as any withholdable payment or other payment to the extent attributable to a withholdable payment. In 2016, the IRS issued regulations delaying withholding on foreign passthru payments until the later of January 1, 2019 or the date of publication in the *Federal Register* of the final regulations definition of “foreign passthru payment.” The Proposed Regulations further delay such withholding, stating that a participating FFI will not be required to withhold tax on a foreign passthru payment made to a recalcitrant account holder or non-participating FFI before the date that is two years after the date that final regulations which define the term “foreign passthru payment” are published in the *Federal Register*.

Other changes. In addition to eliminating gross proceeds withholding and deferring withholding on foreign passthru payments, the Proposed Regulations:

- Eliminate FATCA withholding on non-cash value insurance premiums;
- Clarify the definition of “Investment Entity” for purposes of FATCA;
- Modify due diligence requirements for withholding agents; and
- Make revisions related to credits and refunds of overwithheld tax.

Proposed Regulations Implementing Section 163(j) and the Anti-Hybrid Rules

On November 26, 2018, the IRS proposed regulations fleshing out new section 163(j) of the Code, added by the TCJA. New section 163(j) generally denies a taxpayer business interest deductions to the extent such deductions exceed 30% of "adjusted taxable income" in certain situations. Notably, these regulations include a broad definition of interest. For an overview of these proposed regulations, please see our Legal Update titled “High-Level Overview of the Proposed Regulations on Interest Deduction Limitation Rules.”[8]

Additionally, on December 20, 2018, the IRS released proposed regulations implementing new sections 245A(e) and 267A of the Code. Section 245A(e) generally denies the section 245A dividends-received deduction for “hybrid” dividends, and section 267A generally provides that no deduction is allowed for

8 Our Legal Update on the proposed regulations implementing section 163(j) is available at https://www.mayerbrown.com/files/Publication/86d01210-815f-421a-b1c4-4e7c8637d401/Presentation/PublicationAttachment/4d2b47c1-7515-49b6-b63e-6a153dc4bca7/High_Level_Overview_of_the_Proposed_Regulations_on_Interest_Deduction_Limitation_Ru.pdf.

amounts paid in a "hybrid" transaction or paid to a "hybrid" entity. For an overview of these proposed regulations, please see our Legal Update titled "IRS Releases Proposed Anti-Hybrid Regulations."[9]

Proposed Regulations on Section 956's "Deemed Dividend" Rules for US Corporate Shareholders

On October 31, 2018, the IRS released proposed regulations under Code section 956 that, if finalized, may substantially impact the way in which multinational corporations finance their operations, for example by making it easier for foreign subsidiaries to guaranty US parent debt. For an overview of these proposed regulations and their impact on financing transactions, please see our Legal Update titled "Proposed Regulations Change Calculus of Section 956's "Deemed Dividend" for US Corporation Shareholders."[10]

PLR 201844003: REIT's Sale of Property Pursuant to a Plan of Liquidation Not a Prohibited Transaction

In PLR 201844003, issued on November 2, 2018, the IRS ruled that the sale of real property by a real estate investment trust ("REIT") pursuant to a plan of liquidation would not constitute a prohibited transaction under Code section 857(b)(6), and therefore the REIT's gains on the sale will not be subject to the 100% prohibited transaction tax.

Joint Venture ("JV") held a percentage of the issued common stock of the taxpayer, which is a REIT that was formed for the purpose of purchasing and managing multifamily real estate complexes located in the United States. Pursuant to a joint venture agreement, direct or indirect partners in JV transferred interests in certain multifamily residential real property ("Portfolio A") to the taxpayer. The taxpayer then purchased an indirect interest in another multifamily residential real property ("Portfolio B"). The majority of the income the taxpayer received from the properties was pass-through rental income that the taxpayer represented was qualifying gross income for purposes of Code sections 856(c)(2) and (3).

The taxpayer represented that it had intended to hold the properties for a number of years and to realize rental income and capital appreciation therefrom. However, the taxpayer concluded that current market conditions represent the beginning of a long decline of its assets and that its investors will be best served through a disposition of its assets and the taxpayer's full liquidation. The taxpayer had not previously disposed of any real estate assets.

9 Our Legal Update on the proposed regulations implementing section 245A(e) and section 245A is available at https://www.mayerbrown.com/files/Publication/00a68c35-23cc-4c51-a4fb-4255417bf2c3/Presentation/PublicationAttachment/a01fbdd5-8e5a-4927-9930-430635b4751c/IRS-Releases-Anti-Hybrid-Proposed-Tax-Regulations-V5.pdf.

10 Our Legal Update is available at https://www.mayerbrown.com/Proposed-Regulations-Change-Calculus-of-Section-956s-Deemed-Dividend-for-US-Corporate-Shareholders-11-02-2018/.

Before pursuing a plan of complete liquidation, the taxpayer intended to take several steps, including having its board of directors review strategic alternatives to selling the properties. Then, the board would initiate a portfolio liquidation and formally adopt a plan of liquidation. The adoption of the plan would be publicly disclosed, and the sale of the assets would be performed subject to any approvals from shareholders or otherwise required.

PLR 201844003 is similar to a variety of other rulings recently issued by the IRS in which it concluded that the sales of property in connection with a liquidation would not constitute a prohibited transaction, and thus, would not be subject to the 100% prohibited transaction tax. As in other rulings, PLR 201844003 addressed the sale of property in connection with a REIT's plan of liquidation and the conclusions were based on all the surrounding facts and circumstances. This ruling, however, is distinctive in the way that the rationale for the sales in liquidation was made, in part, on a prediction that the values of the properties would decline in value.

Reminder of Upcoming FATCA and QI Certifications

As a follow-up to the subject addressed in last quarter's *CMTQ*, we would like to remind our readers of the upcoming deadlines to submit the certifications that must be made to the IRS for purposes of FATCA and the Qualified Intermediary regime ("QI"). First, with regards to FATCA, entities that act as sponsoring entities or trustees of a trustee-documented trust have FATCA certifications due no later than March 31, 2019, for the certification period ending December 31, 2017. All FATCA certifications must be made online through the FATCA registration system. A link for each applicable certification (i.e., one for Certification Of Pre-existing Accounts –— "COPA" (if required)— and one for periodic certification) will be available on the home page. The IRS warned that institutions that fail to comply with this certification deadline will be deemed non-compliant for FATCA purposes and may face revocation of their FATCA status and removal from the FFI list.

Finally, a brief reminder of the upcoming QI certification deadlines, which are also applicable to withholding foreign partnerships and withholding foreign trusts. For QIs that selected either 2015 or 2016 as their periodic review year, the deadline for the certification was September 1, 2018 (extended from July 1, 2018). However, if the QI selected 2017 for its periodic review, the deadline for the certification is March 1, 2019 (extended from December 31, 2018).

IRC Section 1400Z Qualified Opportunity Zones: Executive Order Establishing the White House Opportunity and Revitalization Council

On December 12, 2018, President Trump signed an executive order[11] creating a new White House Opportunity and Revitalization Council ("Council"). The Council is designed to coordinate efforts to revitalize American economically distressed communities. In particular, the Council is being formed to coordinate activities across government departments surrounding qualified opportunity zones as defined in section 1400Z which was added to the Code by the TCJA.[12]

The Council is composed of a chair, vice chair, and members who are heads of the major US government departments. The council chair is the secretary of Housing and Urban Development (currently Ben Carson) or his designee. The assistant to the president for Domestic Policy or his designee serves as the vice chair of the Council. The members include the secretary of the Treasury, the attorney general, secretary of the Interior, secretary of Agriculture, secretary of Commerce, secretary of Labor, secretary of Health and Human Services, secretary of Transportation, secretary of Energy, secretary of Education, the administrator of the Environmental Protection Agency, the director of Office Management and Budget, the administrator of the Small Business Administration, the assistant to the president for Economic Policy, the chairman of the Council of Economic Advisors, and the chairman of the Council on Environmental Quality (in each case, or their designees).

The executive order states that the vice chair should convene regular meetings of the Council. HUD will provide funding and administrative support for the Council. To the extent permitted by law and within existing appropriations, a HUD employee will serve as the executive director of the Council.

The Council's mission, according to the executive order, is to work across agencies to determine actions each agency can take to prioritize or focus federal investments and programs in urban and economically distressed communities, including opportunity zones. It is also designed to assess the actions each agency can take, under existing authorities, to minimize regulatory and administrative costs that discourage public and private investment in urban and economically distressed communities, including opportunity zones. It will also consult with state, local and tribal officials to solicit feedback on how to best stimulate the economic development of urban and economically distressed communities, including opportunity zones, and coordinate federal interagency efforts to ensure that public and private stakeholders can successfully develop strategies for economic growth and revitalization.

The executive order also charges the Council with recommending policies to reduce and streamline regulatory and administrative burdens with respect to development of economically distressed communities, including opportunity zones. This includes reducing burdens on applicants applying for multiple federal assistance awards and helping community-based applicants, including recipients of investments from qualified opportunity funds, identify and apply for relevant federal resources to make it easier to receive and manage multiple types of public and private investments. The Council is also to evaluate:

i. Whether and how agencies can prioritize support for urban and economically distressed areas, including qualified opportunity zones, in their grants, financing, and other assistance;

ii. Appropriate methods for federal cooperation with and support for states, localities, and tribes that are innovatively and strategically facilitating economic growth and inclusion in urban and economically distressed communities, including qualified opportunity zones, consistent with preserving state, local, and tribal control;

iii. Whether and how to develop an integrated web-based tool through which entrepreneurs, investors, and other stakeholders can see the full range of applicable federal financing programs and incentives available to projects located in urban and economically distressed areas, including qualified opportunity zones;

iv. Whether and how to consider urban and economically distressed areas, including qualified opportunity zones, as possible locations for federal buildings, through consultation with the General Services Administration;

v. Whether and how federal technical assistance, planning, financing tools, and implementation strategies can be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration; and

vi. What data, metrics, and methodologies can be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including qualified opportunity zones.

The assistant to the president for Domestic Policy is responsible for submitting to the president a detailed work plan of the Council and any recommended changes to federal statutes, regulations, policies, and programs to encourage public and private investment in urban and economically distressed communities including qualified opportunity zones. This will also include best practices to integrate public and private investments in urban and economically distressed communities, including qualified opportunity zones, in order to increase economic growth, encourage new business formation, and revitalize communities.

Coming nearly one year after the congressional legislation to create qualified opportunity zones, the Council appears to be an attempt principally to coordinate efforts around opportunity zones across multiple government agencies. The next set of opportunity zone proposed Treasury regulations will further flesh out the operating rules for opportunity zone funds. Those regulations that we originally thought would be issued by the end of the year are now in limbo because of the government shutdown.

Split in the Circuits on Determining FBAR Willful Violation Penalty Cap

On December 3, 2018, the California Central District Court upheld IRS penalties of $257,888 assessed against Money Shinday and his wife, Nila Shinday, for their failure to report their overseas accounts for a period of five consecutive years.[11] The court decided that the yearly individual penalties are each approximately $51,578 and, thus, were each less than the $100,000 regulatory cap.

31 U.S.C. 5314 requires US citizens to report certain transactions and relationships with foreign financial agencies. The implementing regulation, 31 C.F.R. 1010.306(c), further requires US citizens to report to the IRS foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

11 United States v. Shinday, No. 2:18-cv-06891-CAS-Ex, 2018 U.S. Dist. LEXIS 205372 (C.D. Cal. Dec. 3, 2018).

The Shindays owned an account at UBS AG ("UBS"), a bank in Switzerland, before 2008. They also owned several accounts at the State Bank of India ("SBI"), a bank in India, from the years 2005 to 2011. However, the Shindays failed to disclose their accounts at UBS and SBI that individually had a balance greater than $10,000 in their tax returns for each of the years 2005 through 2011. The IRS assessed cumulative penalties of $257,888 for their violations.

The dispute centered on whether the penalties assessed by the IRS exceeded the maximum penalties that could be assessed against taxpayers for willful violations of FBAR (defined below) reporting obligations.

Prior to the amendment to section 5321(a)(5) in 2004, 31 U.S.C. 5321(a)(5)(B) authorized the secretary of the Treasury to impose a civil money penalty on any person who fails to file a Report of Foreign Bank and Financial Accounts ("FBAR"), but the amount could not exceed $100,000. In 1987, the Department of the Treasury promulgated regulations that adopted the $100,000 cap. In 2004, Congress amended section 5321 and, pursuant to 31 U.S.C. 5321(a)(5)(C), the FBAR willful violation penalties were increased to a maximum amount equal to the greater of $100,000 or 50 percent of the balance in the account at the time of the violation. However, the Department of Treasury did not amend the $100,000 cap set by 31 CFR 1010.820.

The Shindays contended that the regulation's $100,000 cap controls because it is consistent with section 5321 of the statute. The government disagreed.

The Shindays cited two cases decided outside of the Ninth Circuit. In *United States v. Colliot*,[12] the District Court for the Western District of Texas held that the FBAR willful violation penalty is subject to the $100,000 regulatory cap. In *United States v. Wahdan*,[13] the District Court of Colorado decided that the regulatory cap of $100,000 controls and the IRS is not empowered to impose yearly penalties in excess of $100,000 per account.

However, the court concluded that neither of the two decisions was applicable because the IRS penalties assessed in *Colliot* and *Wahdan* only related to the respective taxpayer's violation in a single taxable year. In contrast, the penalties assessed against the Shindays related to their violations in each of the years 2007 through 2011. The court stated that the penalties were imposed for separate alleged FBAR violations and individually, the penalty assessed against the Shindays for each year's violation was within the $100,000 regulatory cap.

By deciding that the $100,000 regulatory cap would be applied annually, the court did not reach the question of whether the regulatory cap of $100,000 is implicitly invalidated or superseded by the subsequent legislation. The discrepancy between the regulatory cap and the statutory cap, therefore, remains an open issue after the *Shinday* decision.

12 No. AU-16-CA-01281-SS, 2018 U.S. Dist. LEXIS 83159 (W.D. Tex. May 16, 2018).

13 325 F. Supp. 3d 1136 (D. Colo. 2018).

In the News

RECENT RECOGNITION

GlobalCapital named Mayer Brown the 2018 Americas Law Firm of the Year – Overall at their Americas Derivatives Awards. In addition, *GlobalCapital* has recently named Mayer Brown their 2018 European Law Firm of the Year – Transactions at their Global Derivatives Awards.

International Tax Review named Mayer Brown 2018 New York Tax Firm of the Year and North America Tax Disputes Firm of the Year at their Americas Tax Awards.

Law360 named Mayer Brown Tax Group of the Year in 2017.

UPCOMING EVENTS

***REVERSEinquiries* Workshop Series: Benchmark and Proprietary Indices**

Join us for our inaugural REVERSEinquiries Workshop on **Monday, February 4, 2019** at Mayer Brown's New York Office. *Registration: 8am; Program: 8:30am – 9:45am ET.* **Click here to RSVP.**

What makes an index an index? We will discuss, among other things:

- rules-based indices,
- the various definitions of indices,
- index governance and index rules,
- discretion, the Advisers Act, and tax considerations,
- index descriptions and rulebooks,
- conflicts of interest and the IOSCO and ESMA guidance, and
- European benchmark regulation.

Save the dates for our entire 2019 REVERSEinquiries Workshop series. For more information, please e-mail REVERSEinquiries@mayerbrown.com.

- March 4, 2019
  Structured UITs and Repack Structures
- April 29, 2019
  Certificate of Deposit Programs and Brokered CD Programs
- June 13, 2019
  New Product Governance and Post-Sale Reviews
- October 17, 2019
  ETNs and Daily Redeemable Notes
- November 14, 2019
  Platforms and Securities Law and Commercial Considerations

Our REVERSEinquiries Workshops are limited to 40 participants; Press is not permitted.

Qualified Opportunity Zone Funds: Structuring and Implementing Tax-Advantaged Fund Transactions

February 26, 2019

Mayer Brown NY | 1221 Avenue of the Americas, New York, NY 10020

Registration: 5:00 p.m. ET; Panel Discussion and Q&A: 5:30 p.m. – 6:30 p.m. ET; Networking, Cocktails & Hors d'oeuvres: 6:30 p.m. – 7:30 p.m. ET

Register

RECENT SPEAKING ENGAGEMENTS

PLI's Pocket MBA San Francisco 2018: Finance for Lawyers and Other Professionals – On October 1, 2018, partner Anna Pinedo led a panel discussion titled "Investment Banking Basics: Fundamentals of Capital Structures" during PLI's Pocket MBA conference in San Francisco.

West LegalEd Center's Private Business Development Companies – On October 4, 2018, partner Anna Pinedo and counsel Brian Hirshberg provided a brief overview of the legal and regulatory requirements applicable to BDCs generally, and focused on recent developments.

PLI's Commodity Exchange Act Basics - On October 10, 2018, partners Curtis Doty and Anna Pinedo provided all the basics a lawyer needs to be conversant in and familiar with the Commodity Exchange Act and the regulatory framework for futures, commodity options, swaps, and retail foreign exchange.

US Tax and Financial Services Regulatory Updates: What's New and What's Next – On October 16, 2018, partners Thomas Humphreys, Anna Pinedo and Donald Waack hosted a seminar in Toronto. During the first half of the seminar, they provided an overview of the most significant regulatory changes and proposed amendments affecting financial institutions, with a focus on non-US-domiciled banks doing business in the United States. In the second half, they held a discussion focused principally on the certain aspects of the US Tax Cuts and Jobs Act of 2017.

Wolters Kluwer's SEC Disclosures, Issues and Developments for FPIs – On October 17, 2018, partners Michael Hermsen and Anna Pinedo reviewed the accommodations available to foreign private issuers, or non-US domiciled companies, that choose to access the US capital markets.

Preparing for the 2019 US Proxy and Annual Reporting Season – On October 25, 2018, Mayer Brown hosted a webinar to discuss issues impacting the upcoming proxy season.

2018 NSCP National Conference - On October 29, 2018, partner Anna Pinedo spoke at the NSCP National Conference, where she participated in a panel discussion titled "BD/MA – 2018 Regulatory Priorities & Best Practices." This session focused on FINRA's and SEC's 2018 regulatory and examination priorities letters and the FINRA report on examination findings to provide insight to broker-dealers and municipal advisors to enhance their compliance, supervisory and risk management programs.

Intelligize's US IPOs: The Market and Legal Developments – On October 31, 2018, partner Anna Pinedo and Raymond James' Kent Nelson covered the US IPO market and recent legal developments during this Intelligize webinar.

Window of Opportunity: The IRS Issues Initial Guidance on Qualified Opportunity Zone Rules – On November 2, 2018, Mayer Brown's Tax practice hosted a webinar that covered the US Internal Revenue Service's (IRS) initial guidance, released on October 19, on the Qualified Opportunity Fund (QOF) rules. Partners David Burton and Mark Leeds and associate Maria Carolina Grecco (all NY) discussed the new QOF rules, which allow US taxpayers to defer capital gain taxation by investing an amount equal to the gain in a WOF within 180 days of the gain recognition event.

PLI's 50th Annual Institute on Securities Regulation – On November 7, 2018, partner Anna Pinedo spoke on the "Financing Issues Facing Late-Stage Private Companies and Smaller Reporting Companies" panel, during PLI's Annual Institute on Securities Regulation.

PLI's Foreign Banks Issuing Covered Bonds into the US – On November 13, 2018, partner Jerry Marlatt and RBC Capital Markets' Laura Drumm discussed the covered bond market in the United States, recent developments for Canadian covered bond issuers and the globalization of the asset class.

Wolters Kluwer's Proposed Regulation Best Interest Rule and Related Developments – On November 14, 2018, partner Anna Pinedo spoke on the proposed Regulation Best Interest Rule and related developments.

PLI's Pocket MBA New York 2018: Finance for Lawyers and Other Professionals – Partner Anna Pinedo co-chaired PLI's Pocket MBA New York conference and participated in a panel discussion titled, "Investment Banking Basics: Fundamentals of Capital Structures" on November 19, 2018.

Wolters Kluwer’s Tax Cuts and Jobs Act Webinars – In November and December 2018, Partners Tom Humphreys and Remmelt Reigersman participated in a three-part webinar series with Wolters Kluwer on the following topics: "The New World of US International Taxation after the Tax Cuts and Jobs Act", "Impact on US Corporations and Their Shareholders of the New 21% Corporate Tax Rate, Section 163(j) Interest Limits and Other New Provisions" and "Section 199A and Other Provisions Affecting Pass-Throughs."

LIBOR – What to Do Now – On November 28, 2018, Mayer Brown hosted a discussion of the discontinuance of LIBOR and strategies for both new and existing transactions. Our lawyers provided practical advice on what to do now and in the future to meet the key challenges the market and our clients will face.

PLI’s At-the-Market Offerings – On December 6, 2018, counsel Brian D. Hirshberg and Raymond James’ Jeff Fordham reviewed the basics of ATMs, as well as some of the legal and regulatory considerations.

Capital Markets Year in Review – On December 11, 2018, partner Anna Pinedo gave an overview of the market trends that shaped the year, including an overview of the IPO market and notable trends, follow-on offerings, and other market developments. In addition, she discussed a number of the principal areas of focus for the SEC during 2018 that affect issuers.

A Year in Review and a Glimpse Into the Future: Regulatory Developments in Implementing Tax Reform – On December 13, 2018, Mayer Brown hosted a tax seminar on 2018's domestic and international tax developments. The program revisited the Tax Cuts and Jobs Act after a year and focused on 2018 IRS TCJA guidance and other domestic and international tax topics. Participants included partners, James Barry, Geoff Collins, Thomas Humphreys, Zal Kumar, Thomas Kittle-Kamp, Michael Lebovitz, Mark Leeds, Marjorie Margolies, Shawn O’Brien, Warren Payne, Leah Robinson, Gary Wilcox and associates Lucas Giardelli, David Goett.

Intelligize’s Up-C IPOs: Structure, Impact and Benefits – On December 13, 2018, partners Anna Pinedo and Remmelt Reigersman gave a review of the Up-C IPO structure, its significant economic and tax benefits to financial sponsors and other selling shareholders and other considerations.

“Tax Reform and Renewable Energy: Planning Techniques, Loopholes, 100% Expensing, BEAT, Credits and Deductions” Stafford Webinar – On January 16, 2019, partner David Burton spoke on the application and impact of the new tax law on the renewable energy sector. The panel discussed new tax law changes impacting renewable energy and provided planning strategies to optimize tax benefits, credits and deductions and to avoid pitfalls.

Opportunity Zone Expo – On January 25, 2019, partner David Burton will speak on, “When to Head Out: Tips for Understanding Fund Setup, Exit Strategies, Expectations and Futures after 5, 7 or 10-Plus Years.”

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