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TAXQUARTERLY

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Editor's Note

We note with sadness the passing of the US Internal Revenue Service's ("IRS") Tax Reform Implementation Office ("TRIO"), the unit in charge of Tax Cuts and Jobs Act of 2017 ("TCJA") regulations. With TRIO having issued over a dozen proposed and final regulation packages in 2018 and early 2019, the TCJA has now been turned over to the IRS's normal regulation writing units. If history is any guide, the lawyers who worked on the various regulation packages will be hot commodities on the speaking circuit for months, if not years, into the future as they explain the intensely complicated provisions that they have wrought. At the same time, practitioners are still struggling with the intricacies of many of the TCJA provisions and still trying to distill parts of the proposed regulations for their true meaning. Cases in point are the Section 267A anti-hybrid proposed regulations, which, despite the title of this section of the Internal Revenue Code of 1986, as amended (the "Code"),[1] (i) do not only apply to disallow interest deductions on hybrid debt and (ii) do not only apply to related party hybrid instruments.[2]

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1 All section references are to the Internal Revenue Code of 1986, as amended.

2 Our Legal Update on the anti-hybrid regulations is available at https://www.mayerbrown.com/en/perspectives-events/publications/2019/01/irs-releases-proposed-anti-hybrid-regulations.

* As described in the Editor's Note, this quote is attributed to, among others, Sen. Russell Long (D., LA).

Editor's Note (cont.)

This quarter's *CMTQ* covers a number of developments in capital markets taxation. Most important is the taxpayer's decision to apply for a writ of certiorari to the US Supreme Court in *Estate of McKelvey v. Comm'r*, a case that has provided pages of copy for us over the last two years. As you may recall, McKelvey extended two pre-paid forward contracts shortly before death. The Tax Court held that, while he had received nearly $200 million dollars, there was no tax when McKelvey extended the contracts. The US Court of Appeals for the Second Circuit reversed and held that McKelvey might be taxed twice: once on the long shares when he extended the contract and again on the contract extension itself. The two holdings stand in stark contrast. The plaintiff's brief rolls out a theory of "phantom regulation," which it explains involves the courts filling in the blanks on regulations that Congress has told the Department of the Treasury ("Treasury") to write, but Treasury has not done so. There has been some academic writing about this, but whether it becomes an accepted way to challenge a regulation is yet to be seen. Also, the Supreme Court only grants a writ if there is a split in the circuits, if the case could have national significance, and/or where the Supreme Court believes a lower court has misapplied or misinterpreted a prior Supreme Court precedent. If the case does make it to the Supreme Court, it will be one of the biggest financial instrument cases ever to get that far, and that, for students of financial instruments tax, cannot be a bad thing (we hope).

Other things that we cover in *CMTQ* this quarter include some early-stage proposals on share buybacks from both sides of the aisle and a couple of updates with respect to FATCA.

Legislative Proposals on Share Buybacks

Members of Congress on both sides of the aisle have proposed changes to the US federal income taxation of share buybacks. As most are aware, TCJA made a number of changes to the Code that have fueled the surge in buybacks. Most importantly, the TCJA required US shareholders owning at least 10% of a foreign corporation with accumulated foreign earnings in foreign subsidiaries to pay a one-time repatriation tax and in connection implemented a new rule allowing a US domestic corporation owning 10% or more of a foreign corporation a 100% deduction for the foreign-source portion of dividends received from the foreign subsidiary. In addition, the TCJA included a temporary expensing provision generally allowing taxpayers to deduct 100% of the cost of certain property and reduced the corporate tax rate from 35% to 21%. These changes brought back and freed up cash for US corporations. Many US corporations have used this cash to buy back their own shares. Share buybacks increased by 50% in the first half of 2018 and hit a record $1 trillion for the full year 2018, which some Congress members apparently feel was outside the spirit of the TCJA changes.[3]

A distribution from a corporation is treated as a dividend for US federal income tax purposes to the extent the distribution is made out of the distributing corporation's earnings and profits. Thereafter,

3 *See* https://www.cnbc.com/2018/12/18/stock-buybacks-hit-a-record-1point1-trillion-and-the-years-not-over.html.

the distribution is a return of capital to the extent of a shareholder's basis in its shares and capital gain to the extent of the excess.

Generally, a sale/redemption is treated as a redemption for tax purposes, rather than as a dividend, if that sale/redemption (1) is not "essentially equivalent to a dividend," (2) is substantially disproportionate to the recipient-shareholder or (3) terminates the recipient-shareholder's interest.[4] In a tender offer, a company can ask for information from tendering shareholders that it can use to determine whether a purchase pursuant to a tender ought to be treated as a dividend or sale for federal income tax purposes. In an open-market repurchase, a corporation generally does not have access to this information and, in the absence of information, treats the purchase as a sale. Moreover, a shareholder selling on an exchange likely will not know that the corporate issuer is on the other side of the trade and will also treat the transaction as a sale rather than a dividend for federal income tax purposes.

Under current law, there is a difference in the taxation of dividends and capital gains for each of individual US taxpayers, corporate US taxpayers, and non-US taxpayers:

	Capital Gain Consequences	**Dividend Consequences**
US Individuals	**-** Short-term capital gains taxed at ordinary income rates at up to 37% plus 3.8% Medicare tax - Long-term capital gains taxed at up to 20% plus 3.8% Medicare tax - Basis in shares limits gain recognized	- Dividends taxed at ordinary income rates up to 37% (preferential rates for certain qualified dividends) - Long-term capital gains taxed at up to 20% plus 3.8% Medicare tax - Basis in shares not generally utilized
US Corporations	- All capital gains taxed at corporate income tax rate (21%)	- Dividend eligible for dividends-received deduction • Less than 20% by vote and value: 50% DRD • 20%–80% by vote and value: 65% DRD • 80% or more by vote and value: 100% DRD
Non-US Taxpayers	- Generally, no US tax on capital gains (with exceptions for capital	- Dividends subject to 30% withholding tax on US source

4 *See* Code section 302(b). The IRS has provided guidance in the form of published revenue rulings with respect to whether the reduction in interest of a *de minimis* shareholder is "essentially equivalent to a dividend." *See* Revenue Ruling 76-385 (holding that a tendering shareholder going from 0.0001118% ownership of a publicly traded corporation to 0.0001081% was not essentially equivalent to a dividend; *but see* Revenue Ruling 81-289 (holding that a tendering shareholder that owns 0.2% of a publicly traded corporation before a redemption and 0.2% after was essentially equivalent to a dividend).

	gain effectively connected with a US trade or business and FIRPTA gains)	dividends (subject to reduction by treaty)

Rubio Proposal

On February 2, 2019, Senator Marco Rubio (R-FL) released a proposal to tax share buybacks as a distribution to all shareholders rather than solely as a sale by the shareholders selling in the buyback.

The details of Senator Rubio's plan are currently unknown. It appears he plans to treat a share buyback as a deemed dividend to all shareholders (both redeeming and non-redeeming shareholders) resulting in phantom income to the non-redeeming shareholders.[5] A formal proposal in the form of proposed legislation is not yet available.

Schumer/Sanders Proposal

In February 2019, Senator Charles E. Schumer (D-NY) and Senator Bernie Sanders (I-VT) proposed another, less technical plan for buybacks. Specifically, their plan proposes to bar a company from buying back its shares unless the company pays all workers a minimum wage of at least $15. Not much more detail is available about the plan, which was unveiled on February 3, 2019 in the *New York Times*.[6]

Estate of McKelvey Files Writ of Certiorari

On March 8th, the taxpayer filed a writ of certiorari with the US Supreme Court in *Estate of McKelvey v. Comm'r*.[7]

The petition focuses on the Second Circuit's conclusion that, when his prepaid forward contracts were extended McKelvey triggered a constructive sale of his long stock under Code section 1259. Although Congress directed the US Treasury to issue regulations in Code section 1259(f), the Treasury has not done so. The petition argues that the Second Circuit then effectively wrote the regulations by adopting a probability analysis to determine whether the number of shares to be delivered under the contracts was substantially fixed within the meaning of Section 1259(d). This, according to the taxpayer, is "phantom regulation." "Phantom regulation is a specific outgrowth of the fact that the

5 *See* Rubio, Made in China 2025 and the Future of American Industry, available at https://www.rubio.senate.gov/public/_cache/files/0acec42a-d4a8-43bd-8608-a3482371f494/262B39A37119D9DCFE023B907F54BF03.02.12.19-final-sbc-project-mic-2025-report.pdf. Rubio's plan makes a vague reference to an article by Marvin A. Chirelstein titled "Optional Redemptions and Optional Dividends: Taxing the Repurchase of Common Shares" (1969), which makes such a proposal.

6 Schumer and Sanders, "Limit Corporate Stock Buybacks" (February 3, 2019), available at https://www.nytimes.com/2019/02/03/opinion/chuck-schumer-bernie-sanders.html.

7 For a refresher on the facts, see *Capital Markets Tax Quarterly* Vol. 1, Issue 1, available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2018/10/capital-markets-tax-quarterly/files/capital-markets-tax-quarterly-update_oct-2018_v7/fileattachment/capital-markets-tax-quarterly-update_oct-2018_v7.pdf.

Internal Revenue Code currently requiring hundreds of provisions 'requiring regulations to be issued to achieve a particular result," citing Philip Gall, Phantom Tax Regulations: The Curse of Spurned Delegations, 56 Tax Law 413, 414 (2003). The petition points out a number of provisions involving financial instruments including Code section 1260 (constructive ownership), Code section 163(j)(5) (dealing with the "old" earnings stripping rules), Code section 246A(f)(dividends), Code section 457A(e)(deferral of income) and Code section 1092(a)(2)(D)(straddles) where Congress has prescribed regulations but none have been issued.

The Supreme Court only grants a writ of certiorari if there is a split in the circuits, if the case could have national significance, and/or where the Supreme Court believes a lower court has misapplied or misinterpreted a prior Supreme Court precedent. Only time will tell is whether the taxpayer's arguments are enough to entice the Court to accept McKelvey's unique case.

House Democrats Propose Legislation That Would Change Swap Sourcing Rules

Typically, payments on a notional principal contract are sourced to the residence of the recipient. Accordingly, a non-US person receiving swap payments from a US counterparty is generally not subject to US withholding tax, while interest payments on debt are sourced to the residence of the payor. On March 13, 2019, Representative Lloyd Doggett (D-TX) and other representatives proposed the Stop Tax Haven Abuse Act of 2019 (H.R. 1712),[8] which would source payments on swaps to the residence of the payor (among other significant changes to the US system of international taxation). This would be a significant departure from current law and would have a sweeping impact on cross-border swaps.

Although we've already seen disclosure on this proposed legislation creep into prospectuses, one of CMTQ's jobs is to give our readers a little perspective. First, this is not the first time Representative Doggett has introduced a bill like this one. On March 3, 2009, he introduced the Stop Tax Haven Abuse Act of 2009 (H.R. 1265),[9] which would have imposed a tax on dividend equivalent payments (now addressed by Code section 871(m) and the regulations thereunder). The currently proposed Stop Tax Haven Abuse Act expands on that notion with the swap sourcing rule. Second, the currently proposed Stop Tax Haven Abuse Act would make other dramatic changes, such as treating foreign corporations managed and controlled in the United States as domestic corporations in certain cases. Given the current makeup of Congress, however, the Stop Tax Haven Abuse Act may have a hard time getting traction.

8 Available at https://www.congress.gov/bill/116th-congress/house-bill/1712/text.

9 Available at https://www.congress.gov/bill/111th-congress/house-bill/1265/text#toc-H780642A8763A4BABAA78237481E8B591/.

Final Regulations on RIC Income Test

On March 18, 2019, the IRS released final regulations regarding the manner in which regulated investment companies ("RICs") take into account income from foreign companies for purposes of annual income test compliance. Generally, at least 90% of a RIC's annual income must be "qualifying income," which includes dividends, interest, gains and "other income" with respect to the RIC's business of investing in stock, securities or currencies. Separately, anti-deferral regimes under the Code may require US shareholders of foreign corporations, in certain circumstances, to include income with respect to the foreign corporation prior to the receipt of dividends from the corporation. One such anti-deferral regime applies to US persons that are "United States Shareholders" (a 10% owner by vote or value) of a foreign corporation that is a "controlled foreign corporation" ("CFC"), where 50% of the vote or value of the CFC is held by United States Shareholders. In that case, United States Shareholders are generally subject to current tax on the CFC's "Subpart F" income, which generally includes passive income earned by the CFC. Similarly, a US person that owns stock in a "passive foreign investment corporation" ("PFIC") may be required to include income with respect to the PFIC on a current basis if the US person has, in effect, a "qualified electing fund" ("QEF") election with respect to the PFIC. Where a RIC is required to include income on a current basis under the CFC or PFIC rules, a question arises whether this income should be treated as a qualifying income for purposes of the RIC's annual income test.

In 2016, the IRS issued proposed regulations that would have treated CFC and PFIC inclusions as dividend income for purposes of the RIC income test (and, thus, qualifying income) only to the extent the inclusions were accompanied by actual distributions from the CFC or PFIC. Under the proposed regulations, any other CFC or PFIC inclusions would not have been qualifying RIC income. In the final regulations, the IRS reversed course. While the final regulations continue to treat CFC or PFIC inclusions as dividends only if accompanied by actual distributions, the final regulations provide that inclusions that are not treated as dividends (because there is no corresponding distribution from the CFC or PFIC) will nonetheless be treated as "other income" with respect to the RIC's business of investing in stock, securities or currencies. Therefore, such inclusions will constitute qualifying income for RIC purposes, regardless of whether the underlying CFC or PFIC makes cash distributions to match the deemed income inclusions. Explaining the rationale for the shift in stance, the IRS cited commentators who noted that the rule in the proposed regulations would produce inconsistent results, for example, by treating RICs that elect mark-to-market treatment with respect to a PFIC as earning qualifying income (even if no distributions are made) but not providing for the same treatment for RICs holding PFICs that make QEF elections.

The preamble to the final regulations also confirms the IRS's position (announced in the proposed regulations) that the IRS will not ordinarily rule on whether or not a financial instrument is a "security" for purposes of the RIC tests. Generally, the determination of whether an instrument is a "security" for RIC purposes depends on whether the instrument is a "security" under the Investment Company Act of 1940 (the "1940 Act"). However, the IRS may consider a requested ruling if the security status of an instrument is sufficiently clear under the 1940 Act or if the Securities and Exchange Commission has issued relevant guidance. Additionally, in response to comments, the IRS determined that it would

not withdraw earlier rulings, such as Rev. Rul. 2006-1, in which the IRS had ruled on whether an instrument was a security.

TAM 201902030 - Determination of Functional Currency for Foreign Currency Exchange Gain or Loss in Partnership Context

In Technical Advice Memorandum 201902030 (the "TAM"), the IRS concluded that, in determining foreign currency gain or loss on debt used to acquire a group of corporations, the functional currency of the beneficial owners (rather than that of the partnership they held the group through) should be used.

Code section 988 provides rules governing foreign currency gain or loss from certain transactions where the amounts received or required to be paid are denominated in terms of a "nonfunctional currency." Under Code section 985(b), a taxpayer's "functional currency" is either the dollar or, in the case of a "qualified business unit," the currency of the place in which a significant part of its activities are conducted and that is used by the qualified business unit in keeping its books and records. A "qualified business unit" is any separate and clearly defined unit of a trade or business of a taxpayer that maintains separate books and records.

In the TAM, the taxpayer purchased a group of corporations from a seller in another country, holding the group through a disregarded entity. This acquisition was financed with debt of the disregarded entity denominated in four different currencies. The taxpayer then contributed the disregarded entity to a partnership in a third country, which was treated as a partnership for US federal income tax purposes and was owned by subsidiaries of the taxpayer whose functional currency was Currency A. This partnership's sole operating asset was a management agreement in the third country, and its functional currency was Currency B.

The IRS concluded that Currency A was the correct functional currency for computing foreign currency gain or loss from principal and interest payments on the debt, stating that the determination turned on whether the debt was "properly attributed to the books of the Partnership or the books of the partners of the Partnership." Because the debt had been used to finance the purchase of stock, rather than in a trade or business of the partnership, the IRS concluded it would not be appropriate to attribute the debt to the books of the partnership, and instead attributed it to the books of the partners.

Final FATCA Regulations on Sponsoring Entities

On March 25, 2019, the IRS published final regulations that provide compliance requirements and verification procedures for sponsoring entities of foreign financial institutions pursuant to FATCA (the

"Final Regulations").[10] The Final Regulations make limited changes to proposed regulations issued in January 2017. This article focuses on two sections of the Final Regulations: responsible officers and written sponsorship agreements.

Definition of Responsible Officer. The proposed regulations required (1) a sponsoring entity of a sponsored foreign financial institution ("FFI") to appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI and (2) the responsible officer to be an individual who is an officer of the sponsoring entity. The preamble of the Final Regulations notes that, in practice, the person in the best position to know and represent if the sponsoring entity is complying with its obligations may be an individual other than an officer of the sponsoring entity, given industry practices. Thus, the Final Regulations define "responsible officer" with respect to a sponsoring entity to include an officer of an entity who establishes and maintains policies and procedures for, and has general oversight over, the sponsoring entity provided that such individual has sufficient authority to fulfill the duties of a responsible officer described in Treas. Reg. section 1.1471-5(j) or section 1.1472-1(f).

Requirement for a Written Sponsorship Agreement. The proposed regulations also required a responsible officer of a sponsoring entity to certify that the sponsoring entity has a written sponsorship agreement in effect with the sponsored entity authorizing the sponsoring entity to fulfill the applicable requirements (either pursuant to the regulations or an applicable Model 2 IGA). The Final Regulations retain this requirement but clarify that the written sponsorship agreement does not have to be a standalone agreement and may be part of another agreement between the sponsoring entity and the sponsored FFI provided that the agreement refers to the requirements of a sponsored FFI under FATCA. The Final Regulations provide that a sponsoring entity of a sponsored FFI must have a written sponsorship agreement in place with the sponsored FFI by the later of March 31, 2019, or the date when the sponsoring entity begins acting as a sponsoring entity for the sponsored FFI. Aside from sponsored FFIs, the Final Regulations also provide guidance on sponsored NFFEs and consolidated compliance programs and compliance FFIs.

FATCA FAQs: Some Penalty Relief for Dividend Equivalents Withholding and Reporting in a Subsequent Year

On its FATCA FAQ general webpage,[11] the IRS announced that, for the 2017 and 2018 calendar years, a withholding agent will not be subject to interest or penalties with respect to a dividend equivalent payment made with respect to a derivative referencing a partnership, provided that the withholding agent withholds and reports on Forms 1042 and 1042-S with respect to the payment by September 17, 2018 (for the 2017 calendar year) or September 16, 2019 (for the 2018 calendar year). *See* FAQ23 under "General Compliance." In a situation where a withholding agent withholds after March 15 of

10 TD 9852.

11 The FATCA FAQ webpage is available at https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal#GeneralQ23.

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the subsequent year, the withholding agent should file a Form 1042 or an amended Form 1042 by September 17, 2018 or September 16, 2019 (as applicable) and write "Dividend Equivalent—Partnership" in the top center portion of the 2017 or 2018 Form 1042. The withholding agent should also file a Form(s) 1042-S or an amended Form(s) 1042-S by September 17, 2018, or September 16, 2019 (as applicable). Finally, when depositing the tax withheld for a dividend equivalent payment made in 2017 or 2018, the withholding agent must designate the payment as being made for the applicable calendar year in accordance with the instructions for Form 1042.

Oral Arguments Heard in *SIH Partners* – Validity of Code Section 956 Regulations

On March 8, 2019, the US Court of Appeals for the Third Circuit heard oral arguments in *SIH Partners LLLP v. Commissioner*, where the taxpayer is appealing a January 2018 Tax Court decision which upheld the validity of Treasury Regulations under Section 956 (150 T.C. No. 3, 2018). This is a case worth watching both for its analysis of the tax consequences of pledges and guarantees by CFCs and, more generally, for the court's approach to the judicial review of tax regulations.

In the case, two CFCs had guaranteed certain promissory notes issued by a related US person to its bank lender. Code section 956(d) provides that, under regulations to be issued by Treasury, a CFC will be deemed to hold an obligation of a US person if the CFC is a guarantor or pledgor of the obligation, thus potentially resulting in an income inclusion (sometimes referred to as a "deemed dividend") for the US shareholders of the CFC.

In *SIH Partners*, the taxpayer requested that the court invalidate the regulations under Code section 956(d) due to their lack of a reasoned explanation and highlighted that the regulations could allow for duplicative income inclusions that, in the aggregate, exceed the principal value of the guaranteed obligation. The Tax Court rejected the taxpayer's arguments and upheld the validity of the Code section 956(d) regulations. The court was also not moved by the argument regarding duplicative inclusions and noted that, even though it may be the case in other scenarios, for SIH the aggregate amount of inclusions under Code section 956 did not exceed the principal amount of the guaranteed obligations. Finally, the court dismissed the taxpayer's claim that Code section 956 income inclusions should constitute "qualified dividend income" taxable at the preferential long-term capital gains rate. Following precedent, the court concluded that the preferential rate was not available given that Code section 956 inclusions are not properly "dividends."[12]

Importantly, recent proposed regulations would eliminate the adverse impact of Code section 956 for many US *corporate* borrowers.[13] That said, the *SIH Partners* case should still serve as a reminder of the significant exposures that may result from CFC pledges and guarantees in those contexts where Code

12 *See Rodriguez v. Commissioner,* 137 T.C. 147 (2011), aff'd, 722 F.3d 306 (5th Cir. 2013).

13 *See* REG-114540-18, Federal Register, Vo. 83, No. 214.

section 956 remains relevant (namely, in pre-2018 tax years and, for subsequent years, in the case of non-corporate US borrowers or corporate US borrowers that do not satisfy the conditions for relief under the recent proposed rules). In particular, it will be interesting to see how the Third Circuit responds to SIH's argument that the Code section 956(d) regulations allow for multiple inclusions in excess of the principal amount of the guaranteed obligation, which many consider an unreasonable result.[14]

More generally, the appellate decision will likely offer important insights into the contours of judicial review of tax regulations as the Third Circuit addresses SIH's contention that a one-sentence explanation in the preamble cannot constitute the reasoned analysis that would be required for the issuance of a valid regulation.

14 It should be noted that Treasury and the IRS recognized this problem and are considering whether to exercise their regulatory authority to allocate the principal amount of an obligation among its multiple CFC pledgors and guarantors. *See* TD 9792, 81 FR 76497 (Nov. 2, 2016); FSA 200216022 (Jan. 8, 2002).

In the News

RECENT RECOGNITION

GlobalCapital has shortlisted Mayer Brown in the following categories for their 2019 Americas Derivatives Awards: America Law Firm of the Year – Overall; US Law Firm of the Year – Transactional; and US Law Firm of the Year – Regulatory. *GlobalCapital* named Mayer Brown the 2018 Americas Law Firm of the Year – Overall at their Americas Derivatives Awards. In addition, *GlobalCapital* 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 2018.

UPCOMING EVENTS

***REVERSEinquiries* Workshop Series:**
Certificate of Deposit Programs and Brokered CD Programs

Please join us on **April 29, 2019**, for our latest REVERSEinquiries Workshop webinar.
Program: 1:00 p.m. – 2:15 p.m. EDT. **Click here to RSVP**.

We will provide an overview of the documentation and other requirements to establish a certificate of deposit program or brokered certificate of deposit program. We will review the bank regulatory, distribution related, FINRA related, and suitability related considerations. Among other things, we will discuss:

- Setting up a CD program;
- Disclosure and documentation considerations;
- Settlement issues;
- The bank regulatory differences between CD and brokered CD issuances;
- The FDIC advance notice of proposed rulemaking on brokered CDs; and

- FINRA and securities law considerations.

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

- 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

TEI Region 2 Tax Forum

Mayer Brown is a co-sponsor of the TEI Region 2 Forum on May 20-21, 2019 in Atlantic City.

Click here to Register and View the Agenda

Topics to be covered include:

- Tax Cuts and Jobs Act ("TCJA") - Federal, International and State Tax Developments;
- Partnership and Joint Ventures
- Developments in International Tax Planning and The Taxation of Digital Services;
- Developments and Business Considerations in Mergers and Acquisition;
- Managing Tax Attributes (NOLs, Depreciation, etc.) Post Tax Reform - Federal and State Implications; and
- Protecting Your Company by Protecting Your Documents (Ethics and Privilege).

TEI Audits and Appeals

Mayer Brown is a sponsor of the TEI Audits and Appeals Seminar on May 20-23, 2019 in Minneapolis.

Click here to Register and View the Agenda

Topics to be covered include:

- Post-TCJA Deals, Positions & Restructurings: How Prepared Are You to Defend Them Today?;
- Transfer Pricing Controversy – The OECD's Harmful Tax Practices Report;
- Transfer Pricing – Is the Bell Tolling for the Arm's Length Standard?;
- Transfer Pricing – Intangibles, Sections 936 and 367(d);
- Transfer Pricing – Offshore or Onshore?;

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- Transfer Pricing and BEAT;
- Bringing Your Tax Examination to Closure;
- Tax Opinion Letters – New Shapes, Sizes and Uses: A Critical Look;
- Transfer Pricing – Effective Competent Authority Management; and
- Preparing for Appeals.

RECENT SPEAKING ENGAGEMENTS

New Financing Techniques – On January 28, Mark Leeds spoke on New Financing Techniques at the eighth annual IBA Financing and Capital Markets event in London.

REVERSEinquiries Workshop Series: Benchmark and Proprietary Indices – On February 4, Tom Humphreys, Anna Pinedo and Brad Berman hosted a seminar in New York on benchmark and proprietary indices as part of Mayer Brown's REVERSEinquiries Workshops. During the seminar, the speakers discussed rule-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.

Financing Alternatives for Life Sciences Companies – On February 7, Anna Pinedo and Dave Bakst, joined by Steve Maletzky (William Blair), discussed financing alternatives for pre-IPO companies; the late-stage (or "cross-over") private placements market; considering milestones when planning a financing strategy; and post-IPO alternatives, including registered direct offerings, PIPE transactions, at the market offerings, and related financing considerations.

Federal Tax Update – On February 18, Tom Humphreys and Mike Lebovitz joined the TEI Houston Tax School, where they provided a Federal Tax Update.

Obtaining Liquidity Through Bought Deals and Block Trades – On February 19, Anna Pinedo and Brian Hirshberg joined a West LegalEdCenter webinar where they discussed when a bought deal or a block trade may be a good alternative, the documentation and execution issues for bought deals, addressing Regulation FD and other diligence and disclosure issues, variable reoffer transactions, documenting block trades, reporting block trades to the tape and trade reporting requirements, and distinguishing block trades from distributions.

US Taxation of Canadian Banks – On February 20, Tom Humphreys presented a briefing on US Taxation of Canadian Banks: New US Guidance on the Base Erosion Anti-Abuse Tax ("BEAT") and Anti-Hybrid Rules at the Fairmont Royal York in Toronto, Canada.

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International Trends in M&A Structuring – On February 21, Lucas Giardelli spoke on International Trends in M&A Structuring at the Mexican Institute of CPAs 13th Annual Forum on the Tax Aspects of International Transactions.

Qualified Opportunity Zone Funds: Structuring and Implementing Tax-Advantaged Fund Transactions – On February 26, Mark Leeds joined a seminar hosted by Hedge Fund Association in Mayer Brown's New York office discussing Qualified Opportunity Zone Funds and how hedge funds and investors can structure and implement these tax-advantaged transactions.

Late-Stage Private Placements & Private Secondary Market Liquidity – On February 26, Anna Pinedo, joined by Kevin Gsell (Nasdaq Private Markets) and Gregory Ogborn (Wells Fargo Securities) hosted a seminar in New York where they discussed timing and process for late-stage private placements; terms of late-stage private placements; principal concerns for cross-over funds; diligence, projections and information sharing; IPO and acquisition ratchets; participation by strategic investors; issuer and third-party tender offers; and private secondary market opportunities.

Preparing Periodic Disclosures for Life Sciences Companies; Areas of SEC Comment – On March 7, Anna Pinedo and Dave Bakst, joined by Polia Nair (EY), discussed SEC comment letter trends; Brexit, LIBOR and cyber disclosures' recent accounting pronouncements; milestones and collaboration and license agreement-related disclosures; revenue recognition and contingent consideration; and other MD&A disclosures.

Understanding How Regulation M Applies to Your Offering – On March 26, Anna Pinedo joined a West LegalEdCenter webinar where she provided an overview of Regulation M and discussed the most important excepted activities, how Regulation M applies to private placements and hybrid offerings, its application in the case of merger/exchange transactions, FINRA Reg M notice requirements and Rule 105 and SEC enforcement activities.

Expanded Regulation An Exemption – On March 28, Anna Pinedo and Mike Hermsen joined a PLI webinar where they discussed the basics of Regulation A; how private companies are using Regulation A; the amendments to Regulation A; the types of companies likely to benefit most from the amendments; and possible offering methodologies for Exchange Act reporting companies using Regulation A.

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