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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

CMTQ couldn't help notice in mid-April when the stock market was "shocked, shocked" at a news report that President Joe Biden would propose increasing individual federal income tax rates on long-term capital gains to equal ordinary income rates (39.6% under Biden's proposal).[1] If only folks had read CMTQ last quarter, they would have realized this proposal was lurking in the wings.[2] We checked and the last time tax rates on long-term capital gains were higher was immediately before the 1978 Revenue Act during the Carter Administration when the effective long-term capital gain rate was 49%.[3] And individual long-term capital gain and ordinary income tax rates have not been equal since the George H.W. Bush Administration, albeit at a much lower 28% rate. This recent capital gains "news" was good for several days of media reports, analysis and talking head air time and, some would say, increased volatility in the stock market--exactly what we need. Unfortunately for tax advisors as of this writing there is no legislative language for any of the President's tax proposals (which BTW are discussed below); for example the effective date of any change in individual long-term capital gain

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1 Including the 3.8% Medicare tax on investment income, the maximum federal income tax rate on long-term capital gains would be 43.4%. The maximum long-term capital gain rate would apply to individual taxpayers with incomes over $1 million.

2 See Vol. 03, Issue 1 and Vol. 3, Issue 2.

3 See Report to Congress on the Capital Gains Tax Reductions of 1978, US Treasury, Government Printing Office, Washington DC (1985). The report notes that the 49% maximum rate resulted from the combined effect of several Internal Revenue Code provisions.

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

(and ordinary income) rates is currently unknown.[4] So, dear reader, stay tuned. As always, CMTQ will continue to cover the ups and downs of the legislative process as it unfolds in 2021.

In the meantime, this CMTQ also covers a private letter ruling approving the settlement of debt without CODI in a bankruptcy, some highlights from recent tax proposals from President Biden's Administration, and more.

## PLR 202050014: Another Ruling Supporting Debt Settlement Without CODI

In PLR 202050014 (the "Ruling"), the IRS blessed a tax-efficient bankruptcy reorganization, again blessing tax planning technology that is at least as old as 2016. The Ruling bolsters authority for the use of bankruptcy transactions as a means of settling debt without triggering cancellation of indebtedness income ("CODI").

First, the facts of the Ruling: A parent corporation ("Parent") owned all of the equity interests of two disregarded entities, LLC1 and LLC2. The substantial majority of the value of Parent was owned by LLC1 and its subsidiaries. Parent, LLC1 and LLC1's subsidiaries subsequently filed for bankruptcy, with LLC1 being the direct borrower of a significant portion of the group's debt. Significantly, the Parent was not a guarantor of LLC1's debt. Under the Ruling, Parent proposed to contribute its assets (including the equity and assets of LLC1 and LLC2) to a newly formed corporation ("NewCo"). Then, pursuant to the same plan, Parent distributed the equity of NewCo to creditors in satisfaction of a portion of LLC1's debt. The Ruling concludes that the LLC1 debt is treated as nonrecourse indebtedness, and the transaction as a whole satisfied the requirements to be treated as a "G reorganization."

Generally, debt of a disregarded entity is treated as owed by the disregarded entity's owner. However, there is uncertainty regarding whether indebtedness that is nominally recourse to the disregarded entity borrower is better treated as recourse indebtedness or nonrecourse indebtedness. On the one hand, because the debt is recourse indebtedness under local law, it is possible to view the indebtedness as recourse indebtedness of the owner. On the other hand, because creditors may only look to the assets of the disregarded entity in order to satisfy any claims, and not to the assets of the owner generally, the tax law may alternatively view the indebtedness as nonrecourse indebtedness of the owner. The difference in treatment is significant. Satisfaction of recourse indebtedness for an amount less than the principal amount of the indebtedness generally results in CODI. If certain requirements are met, CODI may be excluded from the owner's income if the owner is bankrupt or insolvent, although the price of such exclusion is a reduction of the debtor's tax attributes. Alternatively, satisfaction of nonrecourse indebtedness for an amount less than the principal amount

4 For some interesting reading on legislative action and effective dates, see United States v. Carlton, 512 U.S. 26, at 30-31 (1994); *Welch v Henry*, 305 U.S. 134, at 146-147 (1931).



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of the indebtedness may in certain circumstances be treated as a sale of the collateral, resulting in gain rather than CODI.[5] Although gain cannot be excluded under Section 108, gain may qualify for nonrecognition treatment where a transaction qualifies as a tax-free reorganization.

The Ruling illustrates the use of this principle. Although the Ruling does not indicate the dollar amounts at issue, the principles of the Ruling can be used to satisfy indebtedness to creditors without incurring CODI. Gain may be realized on the transaction to the debtors, but if the requirements are met to treat the transaction as a tax-free reorganization, the gain is not recognized. The end result is that no tax is owed by the creditors for settling their indebtedness for less than the face amount. Furthermore, because CODI is not applicable, tax attributes of the debtor are not reduced.

The issues addressed in the Ruling are similar to the transactions undertaken as part of a major bankruptcy for which a ruling was sought in 2016, part of which sought the same advice as that requested in the Ruling.[6]

## Refresher in Info Letter 2020-0033: Short Sales Not UBTI

### THE SHORT OF IT

On December 31, 2020, the IRS published Info Letter 2020-0033[7], confirming that, under certain circumstances, income of retirement plans that is attributable to a short sale of publicly traded stock through a broker is not subject to the unrelated business income tax under section 511 of the Code.[8]

Following, we summarize the applicable provisions of the Code relating to the taxation of unrelated business taxable income ("UBTI") and we briefly analyze the rulings that the IRS cited in Info Letter 2020-0033 in order to understand which income attributable to a short sale of publicly traded stock is excluded from UBTI.

### UBTI – GENERAL BACKGROUND

Code section 511(a) imposes a tax on the UBTI of certain taxpayers that are otherwise exempt from federal income taxation under Code section 501(a).

Code section 512(a)(1) of the Code defines UBTI as gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain deductions which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in Code section 512(b). Section 512(b)(4) provides, in part, that UBTI includes certain income from "debt-financed property" as defined in Code section 514(b).

5 *See Commissioner v. Tufts*, 461 U.S. 300 (1983). Treas. Reg. section 1.1001-2(c), Ex. 7.

6 PLR 201644018.

7 INFO 2020-0033 (December 31, 2020).

8 All section references herein are to the Internal Revenue Code of 1986, as amended (the "Code").


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Code section 514(b)(1) defines the term debt-financed property as any property that is held to produce income and with respect to which there is "acquisition indebtedness" at any time during the taxable year (or during the 12 months preceding disposition in the case of property disposed of during the taxable year).

Code section 514(c)(1) provides that the term acquisition indebtedness means, with respect to any debt-financed property, the unpaid amount of (A) indebtedness incurred by the organization in acquiring or improving the property, (B) indebtedness incurred before the acquisition or improvement of the property if the indebtedness would not have been incurred but for the acquisition or improvement, and (C) indebtedness incurred after the acquisition or improvement of the property if the indebtedness would not have been incurred but for the acquisition or improvement and the incurrence of the indebtedness was reasonably foreseeable at the time of the acquisition or improvement.

## THE IRS LOOKS TO REV. RUL. 95-8 TO CLARIFY THAT INCOME FROM SHORT SALES IS NOT UBTI

In Rev. Rul. 95-8,[9] the IRS addressed a situation where a tax-exempt organization sought to earn, as part of its investment strategy, a profit from the decline in the value of certain publicly traded stock. To sell the stock short, the tax-exempt organization, through its broker, borrowed 100 shares of A stock and sold the shares. The tax-exempt organization's broker retained the sale proceeds and any income earned on these proceeds as collateral for the tax-exempt organization's obligation to return 100 shares of A stock. In addition, the tax-exempt organization put up additional collateral from its own (not borrowed) funds and earned a "rebate fee" equal to a portion of the income earned on the investment of the collateral.

Under the facts described above, the IRS ruled that income of the tax-exempt organization attributable to the short sale (i.e., income earned on the decline in value of the 100 shares of A stock) was not subject to the tax on UBTI because such income was not income from "debt-financed property." The IRS clarified that income attributable to a short sale can be UBTI if the short seller incurs acquisition indebtedness with respect to the property on which the short seller realizes that income; however, the IRS concluded that, even though a short sale created an obligation, it did not create indebtedness.[10]

Further, the IRS determined that neither gain realized on a short sale attributable to the decline in value of stock nor income derived from the proceeds of the short sale, such as rebate fees, are income from debt-financed property.

As a result, if a tax-exempt organization sells publicly traded stock short through a broker, then neither the gain or loss attributable to the change in value of the underlying stock nor any rebate fees earned in connection with this transaction are UBTI unless the tax-exempt organization incurs

9 1995-4 I.R.B. 29.

10 *See Deputy v. du Pont*, 308 U.S. 488, 497-98 (1940).



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acquisition indebtedness in connection with these transactions. The revenue ruling does caveat, however, that no inference is intended with respect to a borrowing of property other than publicly traded stock sold short through a broker.

## Cum-Ex Developments

Recently, both Denmark and Germany charged taxpayers for involvement in cum-ex dividend trading arrangements.[11] Generally speaking, in a cum-ex trade, Party A in country Y agrees to transfer shares in a country X company to Party B in country Z around the time of a dividend payment. The actual owner of the shares may be unclear to the taxing authorities. Tax treaties between country X and countries Y and Z permit taxpayers subject to withholding to receive a refund of tax withheld. In the cum-ex structure, due to the uncertainty of ownership, both Party A and Party B claim the refund for tax withheld, even though the tax may have been withheld only once or not at all. These arrangements are similar to the "swapping out" of dividends that led to the enactment of section 871(m).

## Coffey: Information Reporting Isn't the Same as Filing

On December 15, 2020, the Eighth Circuit reversed the Tax Court's decision in *Coffey v. Commissioner*, 150 T.C. 60 (2018), agreeing with the IRS in its holding that, for statute of limitation purposes, a federal income tax return had not been filed even if the IRS received and stamped as received certain tax return documents from the US Virgin Islands Bureau of Internal Revenue ("VIBIR").[12] A holding in the opposite direction could possibly have turned information reporting exchanges, including FATCA, into taxpayer-friendly reporting mechanisms.

The taxpayers, a husband and wife, owned a profitable enterprise that purportedly relocated to the US Virgin Islands ("USVI") and Judith Coffey claimed to be a USVI resident thereafter. The couple filed joint tax returns for 2003 and 2004 with VIBIR, but not with the IRS. The VIBIR sent the first two pages of the taxpayers' returns to the IRS as part of its normal process to claim "cover over" funds (i.e., tax revenue) from the US Treasury, which the IRS stamped, recorded and processed. Disputing the taxpayers' assertion that they were bona fide residents of the USVI, the IRS conducted an audit and sent them notices of deficiency in 2009, more than three years after it received the taxpayers' returns from the USVI. The taxpayers moved for summary judgment on the ground that the deficiency notices were barred by the statute of limitations under Code section 6501(a). The taxpayers argued that assuming they were nonresidents of the USVI, the returns were filed with the IRS either at the time the returns were filed with the VIBIR or when the IRS Service Center received

11 *See* William Hoke, Denmark Charges Six U.S. and U.K. Nationals in Cum-Ex Case, 102 TAX NOTES INT'L (April 19, 2021); William Hoke, Germany Investigates Cum-Ex Trades by Securities Companies, 101 TAX NOTES INT'L 1717 (March 29, 2021).
12 *Coffey v. Commissioner*, 987 F.3d 808 (8th Cir. 2021).


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the partial return from the VIBIR. The Tax Court agreed, finding that the taxpayers' returns were filed with the IRS more than three years before the notices were issued.

The Eighth Circuit reversed the Tax Court and confirmed the long-standing principle that the statute of limitations begins only when a return is filed. The Court noted that neither the Code nor the regulations define the term "file" or "filing," but said that as a general rule, taxpayers must meticulously comply with the statutory conditions in order to begin the statute of limitations. Courts have also held that a return is considered filed if it was delivered, in the appropriate form, to the specific individual or individuals identified in the Code or regulations.

The Eighth Circuit found that the IRS's actual knowledge was not a filing. Although the IRS received actual knowledge of the taxpayers' information, it did not receive a filing according to the Court. The taxpayers intended to file their returns only with the USVI and failed to meticulously comply with federal filing requirements for USVI nonresidents. Further, the Court reasoned that the VIBIR did not file the taxpayers' returns when they transmitted them to the IRS. The taxpayers also never authorized the USVI to file the returns. In addition, the Court found that it is irrelevant for statute of limitations purposes that the IRS actually received the documents, processed and audited them, and issued deficiency notices.

The Eighth Circuit was also not persuaded by the taxpayers' second argument that their filings with the VIBIR began the statute of limitations period. The taxpayers argued that although their filings were imperfect, they should satisfy their burden to file a return under Code section 6501(a) because they made a genuine and honest attempt to file, even if they were mistaken about residency. The Court held that a prerequisite to an honest and genuine return is that it is filed with the correct individual. Further, the Court pointed out that there is no exception to Code section 6501(a) for a taxpayer's mistaken position about residency. Therefore, because the taxpayers did not comply with the requirements to file returns with the IRS, the Eighth Circuit held that the statute of limitations never began to run.

## FBAR to Pick Up Crypto

On December 31, 2020, FinCEN announced, in FinCEN Notice 2020-2[13], the agency's intention to propose amended regulations implementing the Bank Secrecy Act ("BSA") regarding the Report on Foreign Bank and Financial Account ("FBAR") to include virtual currency as a type of reportable account. The Notice concedes that currently, the FBAR regulations do not define a foreign account holding virtual currency as a type of reportable account, and thus, such account is not currently reportable on the FBAR (unless it is a reportable account because it holds reportable assets other

13 FinCEN Notice 2020-2 is available at https://www.fincen.gov/sites/default/files/shared/NoticeVirtual%20Currency%20Reporting%20on%20the%20FBAR%20123020.pdf#page=1&zoom=auto,-90,792.

than virtual currencies). The Notice is otherwise sparse in details, and does not indicate *when* such regulations will be published or implemented.

## Key Tax Changes in President's American Jobs Plan and American Families Plan

President Biden recently released policy plans for both the business and individual sides of the tax law, each discussed below. For now, there is no legislation fleshing out either plan.

### INDIVIDUAL TAX CHANGES

On April 28, 2021, President Biden proposed the American Families Plan (the "Families Plan"), intended to help families by providing education benefits and certain tax cuts, raising revenue for those expenditures with some tax increases on "high-income Americans."[14] Here are the highlights:

- *Change information reporting*. The Families Plan proposes to require financial institutions to report information on account flows such that earnings from investments and business activity are subject to similar reporting to wages. It is unclear what these changes would look like.
- *Increase individual tax rate*. The Tax Cuts and Jobs Act cut the top individual tax rate from 39.6% to 37% – the Families Plan would reverse this change.
- *Limit preferential rate for capital gains*. The Families Plan would require households making more than $1 million to pay tax on capital gains and dividends at the ordinary income tax rate. It is unclear what tax filing status is meant by "households" and whether the $1 million threshold would look to adjusted gross income.
- *Limit LKEs*. The Families Plan would also limit like-kind exchanges for gains in excess of $500,000. It is unclear whether that is on a property-by-property basis. After the TCJA effective January 1, 2018, LKEs are only permitted for real estate.

### BUSINESS TAX CHANGES

On March 31, 2021, President Biden's administration proposed the American Jobs Plan to create domestic jobs, rebuild national infrastructure and increase American competitiveness. Along with the American Jobs Plan, the administration also proposed the America Tax Plan (the "America Tax Plan"), which includes a mix business tax of renewed tightening of offshore profits shifting and higher

14 The Fact Sheet for the American Families Plan is available at https://www.whitehouse.gov/briefing-room/statementsreleases/2021/04/28/fact-sheet-the-american-families-plan/

income tax rates on corporations.[15] Following the America Tax Plan's release, the Treasury Department released a report providing additional details for the plan.[16] Here are the highlights:[17]

- *Corporate income tax rate*. The America Tax Plan proposes increasing the current corporate income tax rate from 21 percent to 28 percent.
- *Minimum book profits tax*. The America Tax Plan proposes a 15% minimum take on certain large corporations' on-the-book profits reported to investors. The Treasury report states that, in recent years, only forty-five corporations would have been required to pay the minimum book tax. It is unclear what deductions, if any, would be permitted.
- *Repeal FDII*. The America Tax Plan also contemplates eliminating the tax incentives in the Tax Cuts and Jobs Act (TCJA) for Foreign Derived Intangible Income (FDII). The revenue derived from the repeal would be used to expand research and development investment incentives.
- *Replace the BEAT*. The base erosion and antiabuse tax (BEAT) regime targets large multinationals that make deductible payments to foreign related parties over certain thresholds. The BEAT rate of 10 percent is scheduled to jump to 12.5 percent after 2025. Probably unrelated to the similar comic-book acronym, the America Tax Plan proposes to replace the BEAT with SHIELD (Stopping Harmful Inversions and Ending Low-Tax Developments), which would generally deny certain multinational corporations federal tax deductions paid to related parties subject to a lower rate of tax. As the name implies, the America Tax Plan contemplates bolstering the already complex anti-inversion regime.
- *Strengthen GILTI*. The America Tax Plan aims to strengthen a global minimum tax that was imposed on U.S. companies as part of the TCJA. The Global Intangible Low-Taxed Income (GILTI) amount receives a 50 percent deduction, which causes the nominal GILTI rate to be half of the statutory rate. The America Tax Plan wants to trim the deduction to 25 percent, causing the nominal GILTI rate to climb to three quarters of the statutory rate. If the corporate income tax rate is increased to 28 percent as the America Tax Plan proposed, that would result in a nominal GILTI rate of 21 percent. In addition, the America Tax Plan would apply the GILTI regime on a per-country basis to negate the ability of taxpayers to blend high-taxed foreign income with low-taxed foreign income.

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15 The Fact Sheet for the Made in America Jobs Plan is available at https://www.whitehouse.gov/briefing-room/statementsreleases/2021/03/31/fact-sheet-the-american-jobs-plan/

16 The Treasury report is available at https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf

17 For a discussion of the potential impact of the America Tax Plan on life sciences companies, see our client alert entitled Déjà Vu All Over Again: Life Sciences Companies Brace for More US and Global Tax Reform, available at https://www.mayerbrown.com/en/perspectives-events/publications/2021/04/deja-vu-all-over-again-life-sciences-companies-brace-for-more-us-and-global-tax-reform


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- *Push for a global agreement to end profit shifting*. The America Tax Plan emphasizes that the Treasury Department will continue to push for global coordination on an international tax rate that would apply to multinational corporations regardless of their location of headquarters.
- *Replace fossil fuel tax subsidies with clean-energy incentives*.[18] The America Tax Plan would strip away longstanding subsidies for oil, gas and other fossil fuels and replace them with incentives for clean energy. The America Tax Plan would include an incentive for long-distance transmission lines, expand incentives for electricity storage projects and extend other existing clean-energy tax credits.
- *Ramp up enforcement against corporations*. The America Tax Plan includes proposals to bolster the Internal Revenue Service resources it needs to effectively enforce the tax laws against corporations, which will be combined with a broader enforcement initiatives to be announced that will address tax evasion among corporations and high-income Americans.

## Diminished Anonymity: The Corporate Transparency Act ("CTA")

On January 1, 2021, the National Defense Authorization Act for Fiscal Year 2021 ("NDAA") became law after Congress overrode former President Trump's veto. Buried in the NDAA is the Corporate Transparency Act ("CTA"), which generally requires a broad array of business entities, including limited liability companies ("LLCs"), to register with the US Financial Crimes Enforcement Network ("FinCEN") and to disclose, among other things, their beneficial owners. Such registration and disclosure requirements generally apply to both (i) US corporate entities and (ii) non-US corporate entities that are registered to do business in the United States. Although this sweeping initiative is intended to further combat the use of corporate entities by criminals to engage in crimes such as fraud, tax evasion and money laundering, these reporting and disclosure requirements appear to be relevant to all such business entities.

The CTA requires the Secretary of the Treasury to promulgate regulations under the CTA no later than one year after the enactment of the CTA (i.e., no later than January 1, 2022). In an effort to implement the CTA, FinCEN published an Advanced Notice of Proposed Rulemaking on April 5, 2021[19], seeking public comments on several issues that need to be addressed before final regulations can be released. The comment period closes on May 5, 2021.[20]

18 For additional information, please see our client alert entitled Energy Tax Implications of New Infrastructure and Tax Plans, available at https://www.mayerbrown.com/en/perspectives-events/publications/2021/04/energy-tax-implications-of-new-infrastructure-and-tax-plans

19 The Advanced Notice of Proposed Rulemaking is available at https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements

20 For additional information on the CTA and the Advanced Notice or Proposed Rulemaking, please see our Legal Update available at https://www.mayerbrown.com/en/perspectives-events/publications/2021/04/fincen-moves-to-implement-the-corporate-transparency-act



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## In the News

### RECENT SPEAKING ENGAGEMENTS

- ***Upcoming*** – Commodity Pool Regulation Following the enactment of the Dodd-Frank Act, and resulting changes to the definition of commodity pool, more passive investment vehicles, including trusts and funds, must focus on possible characterization as commodity pools. During this briefing hosted by PLI on May 7, 2021, Matthew Kluchenek and Anna Pinedo will address the commodity pool and CTA definitions, types of structures that may raise particular concerns, including funds, trust, securitization and repackaging vehicles, the scope of relief and exemptions, the regulation of commodity pools, CPO enforcement, and more. *Register for the session here.*

- ***Upcoming*** – IBOR Transition: Current Status of US Federal Tax Guidance On May 12, 2021, Mayer Brown tax lawyers Tom Humphreys and Brennan Young will provide an overview of IBOR replacement under current federal tax guidance and a discussion of practical considerations in connection with various different types of instruments during a webcast hosted by Intelligize. *Register for the session here.*

- ***Upcoming*** – Special Purpose Acquisition Companies Under SEC Scrutiny: Mitigating Potential Liability for Offering Participants On May 12, 2021 as part of the Banking & Financial Services webinar series hosted by Mayer Brown, partners Anna Pinedo, Chris Houpt and Brian Massengill will discuss SPACs and mitigating potential liability for offering participants. *Register for this session here.*

- ***Upcoming*** – 2021 Structured Products Legal, Regulatory & Market Briefing On May 13, 2021, alongside the Structured Products Association, we are inviting industry leaders to speak on the latest legal, regulatory and market developments in the structured products market. This briefing will include four short panels covering innovations in ESG-linked structures, Nasdaq Fund Network ("NFN") valuation, an update on the LIBOR transition, as well as ARCC developments and the New York state legislation, and SEC, FINRA and CFTC regulatory announced priorities and enforcement expectations under the Biden Administration. *Register for the session here.*

- Third Annual Mortgage REIT Summit 2021 This year's Summit, held on April 29, focused on the Biden Administration's blueprint for housing finance and other issues. Partners in Mayer Brown's REIT practice were joined by guest speakers from Barclays; EY's Center for Board Matters; and Keefe, Bruyette & Woods. Divided into three sessions, this year's Summit



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addressed market and policy overview, asset finance and tax considerations, and securities developments and "what's on the horizon."

- Global Capital Markets & the US Securities Laws 2021 As capital markets have continued to adjust to changing regulatory standards, PLI dedicated an entire day to providing updates on market developments. On April 7, 2021, speakers gave an in-depth perspective at how the US securities laws work in the context of a rapidly evolving global regulatory environment. Among this group of speakers, Mayer Brown tax partner Christina Thomas participated on a panel discussing the global state of capital markets, the SEC's international regulatory agenda, areas of focus for issuers raising capital in global markets, and current trends in foreign offerings in the United States.
- The SPAC Life Cycle: Business, Legal and Accounting Considerations Forum 2021 On April 20, 2021, PLI hosted an all-day event to provide a comprehensive examination of special purpose acquisition companies (SPACs) and the various business, legal, SEC reporting and accounting considerations that must be addressed in each phase of the SPAC's finite, but fast-paced and complex life cycle. Mayer Brown partner Eddie Best participated on a panel discussing the de-SPACing transition. He addressed proxy and shareholder vote considerations, raising additional capital, SEC reporting and accounting considerations, market communications during the de-SPAC process, financial statement requirements of the target company, auditor requirements, the "Super Form 8-K," and more.
- Private Placements and Hybrid Securities Offerings 2021 A two-day webinar event was hosted by PLI on April 20 and 21, 2021, which covered the basics of private placements, resales of restricted securities, Section 4(a)(1-1/2) transactions and block trades, where Mayer Brown partner Anna Pinedo kicked-off each day with opening remarks. Panels ranged, speaking to changes to private and exempt offerings brought about by the JOBS Act and the SEC's Concept Release on Harmonization of Securities Offering Exemptions, including "accredited investor" crowdfunding offerings, the changes to Rule 701 and the SEC Concept Release on Rule 701 and Form S-8. Various speakers discussed the documentation, principal negotiating issues, and market developments relating to late-stage or pre-IPO private placements, PIPE transactions, 4(a)(2) and 144A offerings, and confidentially marketed public offerings.
- MBA Live: Spring Conference & Expo 2021 Mortgage Bankers Association Hosted by the Mortgage Bankers Association (MBA), this conference, from April 20 to 23, combined four robust categories, including independent mortgage banking, secondary and capital markets, servicing, and technology into one event. Anna Pinedo participated on a panel which revealed the bigger picture to help C-suite executives consider what business structure may be best for their respective independent mortgage bankers. Specifically, topics of discussion included trends and takeaways from companies going public, either via an IPO or SPAC, installing ESOPs, conventional M&A activity, and bank acquisitions.


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- Choosing a Path Forward in a Changed World Tax Executive Institute hosts a four-day virtual program that examined a broad range of technical, policy, and management topics. The Midyear Conference featured dedicated sessions focusing on U.S. federal, international, and state tax, as well as Canadian tax and COVID-19-related measures. Mayer Brown tax partners participated on several panels including: Leah Robinson – "Locals Going Loco: The Disturbing Rise of Aggressive Local Taxes"; Jason Bazar – "Important Trends in COVID-Era M&A Transactions"; Gary Wilcox – "Understanding and Applying Section 163(j) Under the Final Regulations"; Brian Kittle – "Tracking Transfer Pricing Developments Around the World"; Jim Barry – "Tax Attributes in Consolidated Groups, Including Losses, Loss Limitations & TCJA Changes".
- International Tax Issues in SPAC Transactions On March 18, 2021, Mayer Brown tax partner Mike Lebovitz participated in a program which provided an overview of the SPAC lifecycle and discussed some of the key international tax issues associated with SPAC transactions arising at formation as well as at the de-SPAC'ing transaction hosted by IFA USA.
- ABA/IPT Advanced State Income Tax Seminar On March 18, 2021, Mayer Brown tax partner Zal Kumar participated in the Primer on SALT Issues Arising in M&A panel.
- Computing Private Business Use On March 2, 2021, Mayer Brown tax partner Steven Garden participated on a panel discussing the rules for calculating and measuring private business use during a program hosted by NABL institute. The discussion address common situations for which application of the rules has proven challenging.

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