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2014 Financial Services Global Tax Planning Conference

Building a Strategy for Success

Retrospective

Be sure to look for the invitation to the 2015 Financial Services Global Tax Planning Conference to be held Spring, 2015 in New York City.

May 21, 2014 — Banking Securities, and Insurance

May 22, 2014 — Investment Management: Hedge Funds, Mutual Funds, Private Equity, and Private Wealth

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Deloitte Tax LLP hosted its 6th Annual Financial Services Global Tax Planning Conference in New York, NY, on May 21-22, 2014. With the theme "Building a Strategy for Success," the conference spanned two days: the first focusing on Banking, Securities, and Insurance; and the second emphasizing Investment Management. Over the course of the two days, the conference sessions collectively examined the many ways in which the tax department can assist management in charting a course to sustained profitability in a complex regulatory environment.

Designed exclusively for Financial Services tax executives, the gathering brought together senior tax professionals, industry executives and Deloitte subject matter specialists to discuss leading tax and regulatory changes, and to exchange ideas for managing the many opportunities and challenges they present. The conference allowed participants to explore broad themes, such as the prospects for U.S. federal tax reform, the current trends and challenges facing tax departments, and whether or not this will be the year the global economic recovery gets going. The conference also provided opportunities for participants to delve into specific topics of relevance to their sectors and specialties, such as partnership allocations, state tax perspectives, and international regulatory developments. Along the way, the discussion spanned global information reporting, tax technology, business model optimization, tax sourcing and compliance outsourcing, financial products updates, M&A and due diligence, and operationalizing the Foreign Account Tax Compliance Act (FATCA).

This retrospective provides a snapshot of the memorable themes and insights from the event, along with links to other conference materials.

Click on one of the tabs below to get started.

Overview of Conference themes

Plenary sessions

Elective sessions

Overview of Conference themes

- With tax controversy becoming more prevalent, tax planning today inherently includes an aspect of managing "franchise," or reputational, risk. This, along with the challenges of re-regulation, is broadening the range of skills needed within the tax department.
- The U.S. economic environment appears to be improving, and the global recovery may have turned the corner. The financial sector in the U.S. is participating in this recovery, with assets now well exceeding their pre-recession levels and credit-card loss rates and personal bankruptcy filings normalizing.
- Most private equity funds take the view that they are not engaged in a trade or business. While some recent court cases have called this view into question, they have yet to change how the term "trade or business" is generally defined for purposes of the Internal Revenue Code. Nonetheless, government may be examining this distinction, which suggests companies should think through potential implications when structuring new funds.
- The Congressional movement toward tax reform may have lost some momentum, but is likely to remain on the agenda until it is eventually enacted. Although this date may be far off, tax directors should start planning now to make the most of the possible benefits available before and after the transition.
- Outstanding technical skills are now table-stakes for all members of a company's tax function. CFOs are additionally seeking business acumen and strategic insight from tax directors.
- The theme of connectedness and communication permeated the sessions. Tax executives increasingly need to be able to communicate to management in a concise and timely way that conveys the resource and technology needs of the tax function as well as the significant risk management issues.

"Economic analysis provides a framework for thinking about the environment in which you operate."

Patricia Buckley, Director for Economic Policy and Analysis, Deloitte Services LP

"Trade or business is an issue we should be sensitive to because the government is looking at it — and it's better to be prepared than surprised."

Ted Dougherty, Managing Partner, Deloitte Tax LLP

"Both parties largely agree that our current tax system is broken: It's too inefficient and too complex."

Jeff Kummer, Director, Deloitte Tax LLP

"There is an inherent element of risk management in tax."

Julia Cloud, Managing Partner, Deloitte Tax LLP

Plenary sessions

Trends and Challenges Facing Tax Departments (Day One)

2014: The Year the World Recovery Finally Gets Going

Tax Legislative Update: Politics, Policy and the Prospects of Reform

Who's Afraid of the Trade or Business? (Day Two)

CFO Viewpoint: What Does the CFO Need from the Tax Department? (Day Two)

Click on folder icon to view presentations approved for release by the presenters.

Trends and Challenges Facing Tax Departments – May 21st

"Tax planning is being viewed in a different light," observed John Rieger, National Managing Partner – Financial Services Tax Practice, Deloitte Tax LLP. With reputational, or franchise risk increasing, tax approaches that were ordinarily perceived to be healthy for shareholders and the enterprise may now be seen as the opposite. And, because the financial services industry remains under intense scrutiny, the atmosphere is highly charged, so a little misstep could have a significant impact.

A big issue is that we don't know what the next reputational risk around tax will be. Based upon several high-profile cases involving consumer backlash against tax-rate arbitrage, here are a few leading practices offered on managing franchise risk in an uncertain environment:

- Developing a consistent tax message that is aligned with financial reporting and disclosures
- Educating senior management on tax matters and emerging tax risks
- Staying as current as possible on technical developments
- Remaining cognizant of the evolving legal and social implications of products that may have tax impacts to customers, and be prepared to advise management to discontinue a product if the franchise risk associated with it becomes too high.
- Working closely with public relations and government relations personnel: They may have important insights into how tax controversies could play out in the public eye and can advise on messaging strategies and how to respond to questions.

The role of the tax department is evolving to encompass areas that were not previously in its purview, such as being responsible for the reputational risk associated with operational taxes (i.e., financial transaction taxes, FACTA, globalization of information reporting, etc.). Common challenges here relate to talent resources and communication. In terms of talent, not only are more people needed but the skill-set is changing: tax and accounting practitioners often need a deep understanding of issues ranging from regulatory matters to IT implementation procedures to the local nuances of emerging markets. And, if practitioners don't personally know something, they at least need to know how to "get their arms around the issues" and understand how the issues may affect their company by reaching out to peers and advisors.

Indeed, the theme of effective communication pervaded the discussion. Especially concerning the possible risks associated with re-regulation and global tax reform, there is an emphasis on the importance of presenting information to leadership in ways they can quickly grasp. This means being "short, sweet and talking numbers." There is an increased focus on timeliness, noting that tax professionals' penchant for precision can sometimes lead to costly delays. In the current landscape, speed in delivering the essential message to the business is more important than being absolutely perfect.

2014: The Year the World Recovery Finally Gets Going?

Economic recovery from "the Great Recession" has been mediocre to date in the U.S. But now in 2014, the question is: Have we really turned the corner? According to Patricia Buckley, director for economic policy and analysis, Deloitte Services LP, the answer is "yes," provided unforeseen events do not impede the present momentum.

Ms. Buckley noted most economic indicators today show improvement. Individuals in the U.S. are doing better on average with household net worth above pre-recession levels and real disposable income per capita on the rise. Businesses too are seeing light at the end of the tunnel with corporate profits at an all-time high and industrial production rebounding. And perhaps most encouraging, companies are starting to invest again, particularly in the critical categories of equipment and intellectual property products. Ms. Buckley observed the financial sector is participating in the recovery as well, with assets now well exceeding their pre-recession levels and credit-card loss rates and personal bankruptcy filings normalizing. Despite these favorable indicators, she pointed out the U.S. still has some ground to make up. The housing sector is improving, but nonetheless has a long way to go, as does employment, which is only now approaching pre-recession levels.

Although it has been slow, Ms. Buckley noted U.S. recovery has been better than elsewhere. Having narrowly averted a crisis with Greece, the Eurozone is still struggling with high unemployment rates, with only Germany having an employment picture that is comparable with the U.S. Recovery also remains sluggish in Asia, with Japan battling deflationary pressures and a large retiree dependency ratio, and China facing slowing economic growth while simultaneously attempting to satisfy the lifestyle expectations of a rising middle class.

What does all this mean for the U.S. economy? Deloitte forecasts a 75% chance of acceleration in growth.[1]

Nonetheless, "things can always change," cautioned Ms. Buckley, "especially over the long run." Here, she singled out three areas to watch:

1) Energy development — Improvements in energy efficiency and a boom in domestic oil and gas production are enhancing America's energy security. This is decreasing the need for oil imports, improving the trade balance, and setting the stage for a manufacturing renaissance — all of which support the case for continued economic growth.

2) Millennials (those born between 1985 and 2000) — This generation is different. They are laden with debt, some of which is migrating into bad credit, and they have a less consumeristic mindset, often favoring resource sharing over purchasing (i.e., Zip Cars). Will they buy cars and houses as their parents did and how will this affect the economy?

3) Policy considerations — Government spending is still outpacing revenues, with Congress doing little to close the gap. The answer lies in collecting more revenues and/or becoming leaner. What do we as a nation want to invest in? Policymakers must decide soon.

[1]Deloitte University Press, U.S. Economic Forecast, Volume 2 Issue 2, http://dupress.com/articles/us-economic-forecast-volume-2-issue-2/

Who's Afraid of the Trade or Business? – May 22nd

Some recent court cases have raised the issue of whether private equity funds, or their managers, are engaged in a trade or business. Most private equity funds are currently of the view that they are not engaged in a trade or business under the seminal Supreme Court decisions of "Whipple"[1] and "Higgins"[2]. However, some are concerned that a change in the definition or legal interpretation of what constitutes a "trade or business" for federal tax purposes could damage the economics of private equity investments by potentially requiring profits to the investors or the fund manager to be taxed at ordinary income rates, triggering Unrelated Business Taxable Income (UBTI) for tax-exempt investors, and/or causing foreign investors to pay tax on income that is effectively connected with a U.S. trade or business ("ECI"). Should they be afraid?

This panel discussion, led by Ted Dougherty, National Managing Partner, Investment Management Tax Practice, Deloitte Tax LLP, included Deloitte knowledge leaders from a range of specialties. Panelists explored this question by delving into the details of the "Sun Capital"[3] and "Dagres"[4] court decisions. In the former, the United States Court of Appeals for the First Circuit held Sun Capital Partners, a private equity fund, potentially liable for portfolio company pension obligations due to the fact that there were activities at the portfolio company level undertaken by the fund's investment manager on the fund's behalf, and the fund manager had a management fee offset provision with respect to any fees it earned from the portfolio companies.

However, panelists stressed the case relates to provisions in the Employee Retirement Income Security Act (ERISA), as opposed to Internal Revenue Code (IRC). As such, it is mainly significant to investors who are considering purchasing a business with substantial withdrawal liability exposure or substantially underfunded single employer plans. Panelists further noted there has been little indication thus far that the principles of the case will be extended to the tax arena.

[1]Whipple v. Commissioner, 373 U.S. 193 (1963)

[2]Higgins v. Commissioner, 312 U.S. 212 (1941)

[3]Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund, 2013 U.S. App. LEXIS 15190 (1st Cir. 2013)

[4]Dagres v. Commissioner, 136 T.C. No. 12 (March 28, 2011)

Who's Afraid of the Trade or Business? – May 22nd (cont.)

Concerning Dagres, the U.S. Tax Court ruled that the general partner of a venture capital fund was engaged in a trade or business, and thus was entitled to an ordinary bad debt deduction. Panelists asserted this decision had some positive implications. While the Court found that the general partner entity was in a trade or business, it stipulated that the fund itself was an investor. And, even though the Court found the carried interest to be compensatory in nature, it acknowledged that it was still subject to capital gains treatment as opposed to being considered ordinary income.

Speakers stressed that neither of these cases have had a direct impact on how the term "trade or business" is generally defined for purposes of the IRC. Instead, as Mr. Dougherty pointed out, they allude to issues that should be thought through when structuring new funds, including the importance of:

- Preserving the separateness of the management company and the general partners
- Emphasizing that the role of the general management company is stewardship of investments, and not running a business
- Reviewing the language of any management fee offset provisions to limit attribution of fund manager activities to the fund
- Considering the implications of state-level investment partnership rules and how these cases could influence a state court in determining business income
- Remaining cognizant of potential ERISA implications

Featured Speakers (from left):
Lou Ramunno, Principal, Deloitte Tax LLP
Ted Dougherty, Managing Partner, Deloitte Tax LLP (Moderator)
Jim Calzaretta, Partner, Deloitte Tax LLP
Gretchen Sierra, Principal, Deloitte Tax LLP
Elizabeth Drigotas, Principal, Deloitte Tax LLP
Greg Bergmann, Partner, Deloitte Tax LLP

Politics, Policy and Prospects for Tax Reform: A Tax Legislative Update

The U.S. tax reform debate reached a major milestone on February 26, 2014, when House Ways and Means Committee Chairman Dave Camp (R-MI), released a new draft proposal to overhaul the Internal Revenue Code.[1] The draft proposal, which includes legislative language but is not an introduced bill, sets out to achieve tax reform goals that Chairman Camp has called for since 2011. It proposes to reduce the top income tax rate for corporations and individuals to 25 percent (with a 10 percent surtax on upper-income individuals) and move the U.S. toward a territorial system for taxing U.S. multinational corporations while remaining revenue neutral and largely maintaining current levels of progressivity in the tax code. To achieve those goals, the draft proposal includes an array of base-broadening provisions that would have a significant impact on corporations, pass-through entities, individual taxpayers, and tax-exempt organizations.[2]

But the talk about tax reform doesn't stop at the House of Representatives. As Jeff Kummer, Director, Washington National Tax, Deloitte Tax LLP, reminds taxpayers, "Don't forget about the Senate."

Sen. Ron Wyden (D-OR), who took over as chairman of the Senate Finance Committee earlier this year, has a tax reform agenda of his own. In 2011, Wyden, along with Sen. Dan Coats (R-IN), introduced a comprehensive tax reform package that calls for a 24 percent top corporate rate and a 5.25 percent rate on deemed repatriations, but would repeal deferral going forward for U.S.-based multinationals.[3] Wyden has indicated that his earlier proposal would form the basis of any tax reform legislation he moves through the Finance Committee. More recently, Wyden has stated that he also sees tax reform as an opportunity to address the issue of corporate inversions.

Could sweeping reform really happen anytime soon? At present, Mr. Kummer asserted, tax reform remains a "heavy lift." Momentum has slowed as the political narrative shifts to the November elections, and Republicans and Democrats remain far apart on issues such as the distributional impact of reform and whether tax reform should be revenue-neutral or raise additional revenue for deficit reduction. "Nonetheless," he stressed, "ignoring tax reform could be a big mistake."

[1] Committee on Ways and Means, Chairman David Camp, http://waysandmeans.house.gov/taxreform/

[2] Ibid.

[3] The Bi-Partisan Tax Fairness and Simplification Act of 2011, Sponsored by U.S. Senators Ron Wyden (D-Ore.) and Dan Coats (R-Ind.) http://www.wyden.senate.gov/imo/media/doc/Wyden-Coats%20Two%20 Pager%20 FINAL1.pdf

Politics, Policy and Prospects for Tax Reform: A Tax Legislative Update, (continued)

Mr. Kummer explained that conceptually almost everyone still agrees that tax reform is necessary. "Both parties largely agree that our current tax system is broken: it's too inefficient and too complex," he said, Therefore, tax reform will likely remain on the agenda until it is actually enacted and the work being done now will lay the foundation for future reform efforts. The next two years could also provide an opportunity for Congress to work with a president that is seeking to cement his legacy as his term in office winds down. But, even if Congress does not approve comprehensive reform in the last two years of the Obama administration, lawmakers may turn their focus to so-called "loophole closers" not tied to rate reduction. "Here," Mr. Kummer explained, "Camp's draft arguably creates a ready-made list from which to choose."

Considering these possibilities, Mr. Kummer emphasized the need for businesses to plan ahead for tax reform by considering how to enhance their tax planning today and how to manage the timing of tax items to make the most of available benefits when rates change. He also stressed the importance of establishing a communication plan to keep key stakeholders — the C-suite, the audit committee, board of directors, and shareholders, for example — apprised of developments. "Tax reform will happen someday," he said, and "when it does, you'll have one set of rules on one day and a different set the next: Are you prepared to make that transition?"

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CFO Viewpoint: What does the CFO need from the tax department?

The tax function has always been about reporting and complying with regulations, but today it's also about risk management and strategy. As Peter H. Nachtwey, senior executive vice president and chief financial officer, Legg Mason, explained, the CFO, in his view, needs all of the above from the tax department.

In describing the attributes of a strong tax director, he stressed the importance of not only being an outstanding technician but also a well-rounded business person. The tax director should be able to "look over the horizon" for what might be coming next and for ways that the tax function can contribute to the competitiveness of the institution. This "contribution to competitiveness," he explained, can come in many forms, ranging from the ability to tax effectively repatriate cash to devising efficient tax structures on the product side.

Mr. Nachtwey further emphasized the tax director should be an adept manager and communicator. He or she should be capable of educating Board members, business unit leaders, and other stakeholders about the complexities of the tax and reporting environment as well as the risks and opportunities that accompany that complexity. Accordingly, limiting technical jargon and "speaking the language" of different constituencies is key.

Mr. Nachtwey provided another layer of insight into "what the CFO needs from the tax department" by outlining the top three "to dos" for his company's tax director:

1) Groom a successor
2) Facilitate better use of technology
3) Think around corners to identify critical areas that require advanced planning

"Being an outstanding technician is table-stakes; from there, it's about being a well-rounded business person."

Peter H. Nachtwey, Senior Executive Vice President and Chief Financial Officer, Legg Mason, Inc.,pictured above with Julia Cloud, Managing Partner, Deloitte Tax LLP

The relationship between the tax department and the finance function, however, is a two-way street. When it comes to facilitating a successful tax department, Mr. Nachtwey emphasized the CFO has some responsibilities of his own. These include making sure the "right people are on the bus," including selecting a tax director with the appropriate know-how and temperament to match the opportunity set; and giving the tax director the chance to get in front of the CEO so the tax department can be recognized for its contributions.

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Several elective sessions were offered concurrently throughout the conference. Some offered insights into broad trends and developments while others delved into the technical aspects of global tax planning.

Elective sessions – May 21

- Accounting for Income Taxes: Investments in Qualified Affordable Housing Projects
- Business Travelers: Big Challenges Meets Big Data
- Cost Reduction Strategies for FSI Organizations: Tax Sourcing and Compliance Outsourcing Strategies
- Dodd Frank: Transformation in LIght of the Regulations
- EMEA Perspective: Current Developments
- Financial Products Update: Developments under Sections 1234A and 871(m)
- Global Information Reporting and Controversy
- New York State Tax Reform: Navigating the Sea of Uncertainty
- Operationalizing FATCA
- Recent OECD Developments in Transfer Pricing: A Global Perspective
- State Tax Developments Impacting your Organization
- Tangible Property Regulations: The Value Opportunity
- Tax Benefits for Financial Services: Software Development and Deployment
- Tax Technology: Staying Ahead of Changes in the Industry
- The Capital Implications of Deferred Tax Assets: A Regulatory and Tax Perspective

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Elective sessions – May 22

- Current Topics in M&A
- Financial Products Update
- International: Foreign Investments in US Real Estate
- Local country developments: Spotlight on India, China, Argentina and Mexico
- Multistate: Economic Nexus and Other State Tax Developments impacting Investment Management
- Navigating the waters of investor due diligence and investor relations
- Operationalizing FATCA
- Partners and partnership allocations
- Select Advanced Topics in Debt Tax Planning and Compliance
- Sub-K and other developments from the IRS
- Tax considerations for private fund managers converting to or launching retail funds
- Why has the IRS become increasingly interested in the Investment Management industry? What does it mean for you and how can you weather the storm?

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Concluding Perspectives

The complexity within the financial services industry itself as well as concerning the regulations governing it has reached unprecedented levels. This complexity is redefining the risks tax directors are being asked to manage, the resources they need to execute their department's reporting and planning duties, and the skills they need to effectively interact with a growing array of constituents. While challenging, this heightened complexity points to expanding opportunities for tax executives to go well beyond compliance to contribute even more to the profitability and competitiveness of their institutions.

Please join us next year to continue the dialogue.

John Rieger, National Managing Partner, Financial Services Tax Practice, Deloitte Tax LLP

Ted Dougherty, National Managing Partner, Investment Management Tax Practice, Deloitte Tax LLP