

Transaction Costs Webinar Series

PART TWO: What Documentation Is Required for Allocating Transaction Costs?

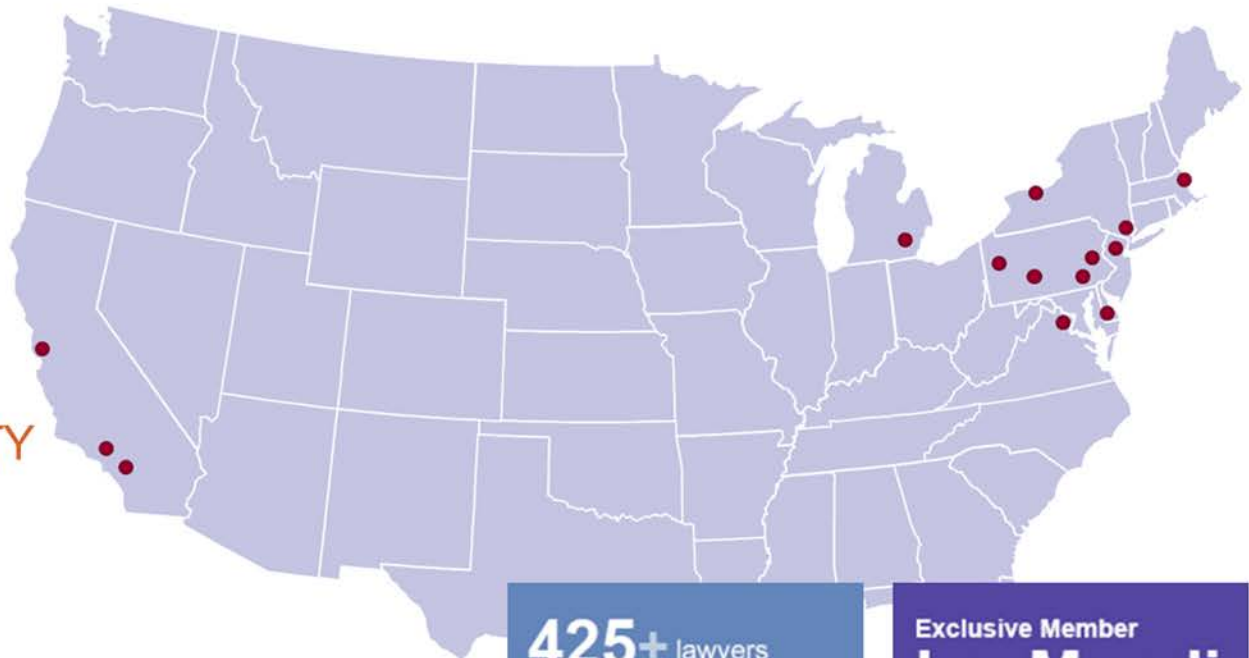
Annette M. Ahlers, Of Counsel
Tax and Estates Practice Group
Pepper Hamilton LLP

Pepper Hamilton LLP
Attorneys at Law

August 6, 2019 | 12:00-1:00 PM (ET) | 9:00-10:00 AM (PT)

Locations

BERWYN
BOSTON
DETROIT
HARRISBURG
LOS ANGELES
NEW YORK
ORANGE COUNTY
PHILADELPHIA
PITTSBURGH
PRINCETON
ROCHESTER
SILICON VALLEY
WASHINGTON
WILMINGTON



425+ lawyers

14 offices in U.S.

125+ years of serving clients

Exclusive Member

LexMundi

firm for
Pennsylvania

Capabilities

Best Lawyers

More than 65 lawyers listed, including 6 as Lawyer of the Year

75+

lawyers highly ranked by Super Lawyers and Rising Stars

SERVICES

BUSINESS
GOVERNMENT REGULATION
HEALTH SCIENCES
INTELLECTUAL PROPERTY
INTERNATIONAL
LITIGATION

INDUSTRIES

AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT
AUTOMOTIVE
CANNABIS
CONSTRUCTION
ENERGY
FINANCIAL SERVICES
FOOD AND BEVERAGE
HEALTH SCIENCES
HIGHER EDUCATION
INVESTMENT FUNDS
LIFE SCIENCES
NONPROFIT ORGANIZATIONS AND FOUNDATIONS
PHARMACEUTICALS AND MEDICAL DEVICES
PRIVATE CLIENTS
RETAIL
TECHNOLOGY
TRANSPORTATION

Annette M. Ahlers

Of Counsel, Tax and Estates Practice
Pepper Hamilton LLP

213.928.9825

ahlersa@pepperlaw.com

- ▶ Has more than 28 years' experience providing large and mid-size corporate clients advice in corporate tax matters
- ▶ Previously worked for the National Tax Group of Moss Adams LLP and Ernst & Young, LLP, where she was a national tax partner and director of M&A tax services for the mid-Atlantic area.



Audio

The screenshot displays the Cisco Webex Events interface. At the top, the title bar reads "Cisco Webex Events" with standard window controls. Below the title bar is a menu with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area shows a video player with a red text overlay: "Audio should stream automatically on entry through your computer speakers". Below this, a banner for "Pepper Hamilton Webinar" is visible. At the bottom of the video player, an "Audio Broadcast" control panel is shown, displaying "24.7 Kbps" and buttons for "Pause" and "Stop". The "Pepper Hamilton LLP Attorneys at Law" logo is also present. On the right side, a "Participants" panel lists "Panelist 1" (Brian Dolan (Host)) and "Attendee" (Brian Dolan (me)). The bottom of the interface features a toolbar with icons for mute, video, chat, and other functions.

File Edit View Communicate Participant Event Help

Cisco Webex Events

Connected

Viewing Pepper Hamilto...

Audio should stream automatically on entry through your computer speakers

Pepper Hamilton Webinar

Audio Broadcast

24.7 Kbps

Pause Stop

Pepper Hamilton LLP
Attorneys at Law

Participants

Panelist 1

Brian Dol... (Host)

Attendee:

Brian Dolan (me)

Q&A

Audio

The screenshot displays the Cisco Webex Events interface. At the top, the title bar reads "Cisco Webex Events" with standard window controls. Below the title bar is a menu bar with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area shows a video feed of a webinar slide. The slide has a white background with a purple gradient bar at the bottom. The text on the slide reads: "If you cannot stream audio, click phone icon and a phone number will be sent to you" in red. Below this is a large purple gradient bar with the text "Pepper Hamilton Webinar" in white. At the bottom of the slide is the logo for "Pepper Hamilton LLP Attorneys at Law".

Overlaid on the bottom of the video feed is an "Audio Broadcast" control panel. It shows a status of "24.7 Kbps" and two buttons: "Pause" and "Stop". Below the control panel is a row of icons: a phone icon, a microphone icon, an upload icon, a person icon, a chat icon, a menu icon, and a red close icon.

On the right side of the interface is a "Participants" panel. It lists "Panelist: 1" with "Brian Dolan (Host)" and "Attendee:" with "Brian Dolan (me)".

An arrow points from the text on the webinar slide to the phone icon in the bottom control bar.

Q&A

Cisco Webex Events

File Edit View Communicate Participant Event Help

BD
Brian Dolan (Host)

Viewing Pepper Hamilto... ▾

Click here to send questions to us

Pepper Hamilton Webinar

Audio Broadcast
24.7 Kbps
Pause Stop

Pepper Hamilton LLP
Attorneys at Law

Participants

- Panelist: 1
 - BD Brian Dol... (Host)
- Attendee:
 - BD Brian Dolan (me)

Q&A

**The program will be starting at approx. 12:00pm ET.
There is currently no audio until we start.**

We are on mute and will be starting in a few minutes.

Email dolanb@pepperlaw.com if interested in receiving a CLE form.

Agenda

- ▶ Brief Review of What is a Transaction Cost and Regulations Governing the Treatment of Transaction Costs.
- ▶ Default Treatment if No Documentation Assembled With Respect to Transaction Cost Allocations.
- ▶ What Information is Needed to Perform an Allocation?
- ▶ What is a Success-Based Fee? Why Does This Designation Matter?
- ▶ Success based fees, Rev. Proc. 2011-29 safe harbor election, and 9100 Relief.

Definition of Transaction Costs—In General

- ▶ A cost that facilitates a restructuring, recapitalization, or reorganization of the capital structure of a business entity, including reorganizations under Section 368 and distributions of stock under Section 355, must be capitalized. Treas. Reg. Section 1.263(a)-5(a)(4).
- ▶ Distributions of stock in a Section 355 transaction.
- ▶ A transfer described in Section 351 or Section 721, or a formation of a disregarded entity.
- ▶ An acquisition of capital.
- ▶ A stock issuance.
- ▶ A borrowing, including a debt for debt exchange.
- ▶ Writing an Option
- ▶ Changes the capital structure

Definition of Transaction Cost – cont.

- ▶ Any Cost paid or incurred in the investigation of, or in pursuit of a Transaction described in the Regulations.
- ▶ Under these rules, a Transaction Cost includes costs that are incurred by either an acquiring company or a target company, but not a selling (or buying) individual shareholder.

Definition of Transaction Costs -Facilitative Costs

- ▶ A cost facilitates a transaction described in Treas. Reg. Section 1.263(a)-5(a) if it is paid in investigating or otherwise pursuing the transaction, as determined based on all of the facts and circumstances. The fact that a cost would (or would not) have been paid but for the transaction is relevant but does not determine whether the amount facilitates the transaction. See Treas. Reg. Section 1.263(a)-5(b)(1). The foregoing definition of “facilitate” is very broad and encompasses many costs, including:
 - ▶ Investment banking fees for a fairness opinion regarding the corporate separation;
 - ▶ Costs to develop materials for soliciting and obtaining shareholder approval of the transaction.
 - ▶ A cost that is payable upon the successful completion of a transaction (a “success-based fee”) is presumed to facilitate the transaction and must be capitalized unless the taxpayer provides sufficient documentation to support an allocation of some or all of the cost to activities that do not facilitate the transaction. See Treas. Reg. Section 1.263(a)-5(f).

Default Treatment if No Documentation Assembled or Analysis Performed

- ▶ A taxpayer must capitalize an amount “paid in the process of investigating or otherwise pursuing the transaction.” Treas. Reg. Section 1.263(a)-5(a) and (b).
- ▶ Certain detailed exceptions to this rule apply, but qualification under those exceptions may still require an allocation of a group of costs between capitalizable and other costs in order to demonstrate that a cost is excepted under these rules.
 - This routinely occurs with a lump-sum fee charged by a single service provider, or a one line bill that provides no detailed information as to the services provided.

Transaction Costs - Exceptions

- ▶ Certain costs that are incurred at the same time as a transaction is occurring are treated as “non-facilitative” costs and must be evaluated under non-transaction cost authority--
 - A financing cost is viewed as a cost of entering into financing
 - The cost of an insurance policy
 - Employee salaries, severance or bonus payments
 - Integration costs
 - Abandonment costs (except for certain termination fees)
 - Costs of an asset sale – treated as costs associated with the sale of those assets and not another transaction
 - Purchase price of the assets or business or stock
 - Costs associated with a mandatory stock distribution required by law
 - Certain costs associated with filing a chapter 11 or defending against an involuntary bankruptcy
 - Certain Registrar and transfer agent fees for the maintenance of capital stock records

Transaction Costs – Limited Exception

- ▶ As stated, absent an allocation, all transaction costs are required to be capitalized under these rules.
- ▶ An exception is provided, however, for certain acquisitive transactions where amounts are paid “in the process of investigating or otherwise pursuing a **covered transaction...**” if the costs are not otherwise “**inherently facilitative**” and if,
 - The costs relate to activities prior to the date of an LOI, Exclusivity Agreement (other than a confidentiality agreement) that is executed by representatives of the target and acquiring company, or
 - The costs relate to activities prior to the date “on which the material terms of the transaction... are authorized or approved by the taxpayer’s board of directors...” Treas. Reg. Section 1.263(a)-5(e)(1).

Definition of Covered Transaction

- ▶ **“Covered Transaction”** Treas. Reg. Section 1.263(a)-5(e)(3)–
 - Special rules apply with respect to the treatment of costs incurred in a “covered transaction”
 - Defined as any one of the following three types of transactions:
 - (i) “A taxable acquisition by a taxpayer of assets that constitute a trade or business,
 - (ii) A taxable acquisition of the ownership interests in a business entity (whether the taxpayer is the acquirer in the acquisition or the target of the acquisition), if immediately after the acquisition, the acquirer and the target are related within the meaning of section 267(b) or 707(b), or
 - (iii) A reorganization described in section 368(a)(1)(A), (B), (C) or a reorganization described in section 368(a)(1)(D) in which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354 or 356 (whether the taxpayer is the acquirer or the target in the reorganization).”

Significance of a Transaction Being Treated as a “Covered Transaction”.

- ▶ If the transaction qualifies as a “covered transaction”, certain investigatory costs can be eligible for a deduction, or treated as start-up costs and then deducted subject to special rules when the investigatory costs are incurred prior to the bright line date and are not otherwise inherently facilitative. Treas. Reg. Section 1.263(a)-(5)(e)(3).
 - There is always an exception from this rule for “inherently facilitative” costs, no matter who pays or incurs such costs
- ▶ NOTE: In the case of the taxable acquisition of assets, only the Acquiring Company can take the position that the transaction is a “covered transaction”. A Target Company that is selling its assets does not qualify to treat that transaction as a covered transaction, and thus, cannot take advantage of the special rules available for the treatment of costs in a covered transaction.

What Information Must Typically Be Assembled and Reviewed to Support Transaction Cost Allocations?

- ▶ General Ledger Entries of Transaction Costs that are or will be listed on the general ledger of the Taxpayer.
- ▶ A Letter of Intent and/or Exclusivity Agreement, and/or a Confidentiality Agreement and the dates any of these documents were entered into by the parties.
- ▶ Execution copy of the Flow of Funds Memorandum, with wire transfers showing the date of payment of the invoices and the party designated as payor and payee.
- ▶ Details on the additions and subtractions to the working capital account that describes or lists which payments to specific service providers are to be made by the taxpayer on or after closing.

Information Request List—cont.

- ▶ Execution copies of any Acquisition Agreement, including schedules and any side-agreements.
- ▶ Debt Instruments created or modified as part of the transaction, including the terms of the finance costs.
- ▶ Engagement letters and Invoices from the identified service providers including accountants, lawyers, employment experts, bankers, IT firms.
- ▶ Any financial statements of the Taxpayer for the relevant time period covering the transaction.
- ▶ Any reports and structuring documents or step plans generated by due diligence or transaction planning teams as part of the investigatory activities of either the acquiring company or the target.

Information Request List—cont.

- ▶ Board of Director meeting minutes of the Taxpayer (including any presentations by outside service providers) reflecting key decisions and the dates of such decisions with respect to the transaction and/or payments to be made to service providers who assisted with the transaction.
- ▶ Statements from key management at either the acquiring company or target or both to verify and explain what the service providers were doing and when they were doing it (if such information is not clear from the invoices or other documents). For the one line invoices from lawyers or other service providers, name and contact information for a point person at each firm to discuss the scope of services.
- ▶ Documents indicating that certain fees paid by the Taxpayer were success based fees.

The Allocation Process

- ▶ Steps for Allocation Process:
 - Review acquisition documents to understand the type of transaction.
 - Determine if you are performing the allocation for BOTH acquiring and target or just one side of the transaction.
 - Review any Engagement Letters for the relevant service providers.
 - Review the general ledger and the invoices assembled by the party that relate to the transaction.
 - In this review, look for information that includes:
 - Who hired the service provider.
 - Dates that the service provider worked on the transaction.
 - What is the service provider's description of their services on the invoice
 - When was the invoice paid? At closing? Prior to closing? After closing?

The Allocation Process – cont.

- ▶ For legal bills, do you have detailed time and date entries indicating when the services were performed and by whom at the firm?
 - This information could provide helpful insight, by for example, stating that 5 hours was charged by someone in the firm’s employee benefits group reviewing compensation agreements. See, Treas. Reg. Section 1.263(a)-5(d)(2) providing an exception from capitalization for employee compensation matters.
- ▶ In the process of reviewing the invoices and other documents, you may come across “one-line” invoices, that say “Work on Project ABC”, which is the code name for the transaction. In these cases, additional inquiries must be made to allocate the costs over the various categories of services.
 - Send emails or have a phone call with the relevant “one-line” service providers to determine what services were performed and over what time period.
 - Ask that they allocate their fees, as a percentage or a fixed dollar amount over the various – narrowly defined service categories.
- ▶ Determine if any of the costs reviewed are “inherently facilitative”
- ▶ For “Success-Based” Fees – those paid only upon closing of a transaction – a much more robust analysis is required – which we discuss later in the slide deck.

Examples of Transaction Cost Service Categories

- ▶ This is not an exhaustive list, but provides certain general categories of costs. *Practice Tip: The more categories of costs you can identify, the more opportunity to find a position other than capitalization.*
 - **Ordinary and Necessary, Routine Expenses** –
 - costs incurred as part of operating the business during the transaction period, or after the transaction closes, normal financial reporting on current operations, filing an 8-K that merely fulfills a reporting requirement and is not required to close the transaction.
 - **Employee Related Costs** – Employee severance, travel costs, option plan reviews
 - **Investigatory Pre-Bright Line Costs** – Data room review, preliminary diligence
 - **Facilitative Costs**—HSR filing, S-1 preparation and filing, exchange agent fees, drafting Acquisition documents
 - **Financing**—financing fees, review of debt agreements, negotiating with lenders
 - **Insurance Policies**—payments for multi-policies including indemnity policies.
 - **Leases**—Any fees paid to renew or renegotiate lease agreements
 - **Organizational Expenses**—state filling fees, organizational fees, legal fees to form new entities.

Simple Example -After review of all invoices, and other documents, including a review of any success-based fees (discussed below) you can begin to allocate the costs over the various categories--

Service Provider	Party that		Ordinary Business	Employee Costs	Investigatory Pre-Bright Line	Facilitative and Post-Bright Line Investigatory	Financing	Total
	Hired	Paid						
Investment Advisor 1	A	T			\$1,400,000	\$600,000		\$2,000,000
Investment Advisor 2	T	T			\$350,000	\$150,000		\$500,000
Consultant	A	T		\$200,000				\$200,000
Law Firm 1	T	T	\$50,000	\$35,000	\$250,000	\$150,000	\$45,000	\$530,000
Law Firm 2	A	T		\$40,000	\$100,000	\$750,000	\$75,000	\$965,000
Accounting Firm 1	A	T		\$15,000	\$150,000	\$45,000	\$10,000	\$220,000
Accounting Firm 2	T	T	\$35,000	\$10,000	\$210,000	\$35,000	\$5,000	\$295,000
Bank	A	T					\$750,000	\$750,000
Totals			\$85,000	\$300,000	\$2,460,000	\$1,730,000	\$885,000	\$5,460,000

Success Based Fees - Treas. Reg. Section 1.263(a) - 5(f) Appropriate Documentary Evidence

- ▶ Special rules exist for the documentation and analysis of success-based fees –
- ▶ Documentation and analysis of the information relevant to the allocation of the success-based fee must be completed on or before the due date of the taxpayer's timely filed federal income tax return for the taxable year during which the transaction closed, and in which the costs were paid.
- ▶ Must consist of more than merely an allocation between activities that do and do not facilitate the transaction. Documentation must identify:
 - The various activities performed by each service provider;
 - The amount of each fee (or percentage of time) allocable to each of the various activities performed;
 - If date is relevant to determine whether an activity facilitated the transaction, the amount of each fee allocable to the performance of that activity before and after the relevant date; and
 - The name, business address and business telephone number of the service provider.

Example of Documentation of Success – Based Fees

- ▶ Tech. Adv. Mem. 20100236 (Sept. 21, 2009)
 - The IRS listed relevant information and documentation that supported a taxpayer's deduction of a portion of its success-based fees.
 - Relevant information and documentation included:
 - Investment banker presentation presented to Taxpayer
 - Retainer agreement.
 - Detail of out-of-pocket expenses.
 - Booklet prepared and presented by Investment Banker, which contained the agenda and outlined the process and the proposed timeline for the process for the "kick-off" meeting.
 - Letters to Parties to the transaction transmitting proposed timeline.
 - List of potential buyers.
 - Confidentiality Agreement.

TAM 20100236 – cont.

- Project working group list.
- Notes of certain employees and documentation of meetings with Parties to the transaction regarding certain representation and issues. Investment Banker presented at this meeting and prepared the presentation (along with Taxpayer) for the meeting. Information concerning a Fairness Opinion. This presentation was prepared and presented by Investment Banker, and was therefore a work product of Investment Banker.
- Data room information including disks containing all of the documents provided to potential suitors. Investment Banker reviewed and organized all of the various documents, provided and maintained hard copies, and maintained the master list of documents for the data room.
- "Confidential Booklet" prepared by Investment Banker and Taxpayer to send out to potential suitors introducing Taxpayer to targeted potential acquirers.
- Billing invoice, paid by Taxpayer, with no detailed breakdown of services rendered.

TAM 20100236 – cont.

- ▶ In the TAM, the taxpayer underwent an acquisition transaction and in the process of determining the benefits of the proposed transaction and ultimately entering into the transaction, the taxpayer incurred significant fees paid to various service providers, including fees paid only upon the successful closing of the transaction.
- ▶ The IRS addressed the issue of whether an allocation schedule prepared by a tax advisor that detailed and allocated certain success-based fees could qualify as “other records” under Treas. Reg. Section 1.263-5(a)-5(f).
- ▶ As listed above, the tax advisor’s allocation schedule was prepared using the detailed information listed in the TAM. These documents and the information provided to the IRS were contemporaneously assembled documents, and involved review and analysis by the tax advisor as to the nature of the services provided.

Safe Harbor Election for Success-Based Fees: Rev. Proc. 2011-29, 2011-1 C.B. 746

- ▶ In order to resolve the intense factual document assembly and back and forth with the IRS as to the strength and sufficiency of documentation discussed above, Rev. Proc. 2011-29 provides a safe harbor election (the “Safe Harbor”) for allocating success-based fees between activities that facilitate a ***covered transaction*** (i.e., are capitalized) and activities that do not facilitate a ***covered transaction*** (i.e., are not capitalized).
- ▶ An election pursuant to the Safe Harbor applies only to the transaction for which the election is made, and once such election is made, it is irrevocable.
 - The election applies to **all** success-based fees paid or incurred by the taxpayer for the transaction for which the election is made.
 - Each party to the transaction must make its own election – it’s a taxpayer election, not a transaction election.

Making the Safe Harbor Election

- ▶ If the Taxpayer intends to make the election under Rev. Proc. 2011-29, documentation must be assembled and statements must be made indicating that all of the “success-based” fees have been separately designated.
- ▶ The election is not valid if any of the success based fees are not included in the election form.
- ▶ The Taxpayer must also provide verification that the transaction is a “covered transaction” as defined in Treas. Reg. Section 1.263(a)-5(e)(3).
- ▶ The party making the election must be either the target or the acquiring company.
- ▶ Individual shareholders cannot make the election.

If Safe Harbor Election is Not Made Taxpayers are Subject to the General Documentation Rules

- ▶ ILM 201830011 (June 21, 2018)
 - In the ILM the Taxpayer deducted 92% of its success-based fees and used as its support for this allocation, a 2-page letter from the success-based service provider, its investment banker (IB).
 - The safe harbor election of 2011-29 was not made.
 - In exam, the IRS disallowed the deduction of 92% of the success-based fees because the IB letter was not sufficient documentation under Treas. Reg. Section 1.263(a)-5(f). Significant required documentation and information was missing from the 2-page letter, and a powerpoint presentation provided by the Taxpayer after the exam began. Including:
 - Names, address and roles of each of the professionals working on the transaction,
 - Other records that support the amount of the fee allocated to each identified activity performed by the service provider.

ILM 201830011

- ▶ In addition, the IB letter that was provided had significant caveats that stated the percentage allocations were estimates and that the IB did not keep detailed time records. While the letter indicated that team members involved in the transaction were interviewed in preparing the percentage allocations, no information was provided on who those professionals were, the timing of their services, details with respect to their services, or their area of expertise or role in the transaction.
- ▶ As a result of the lack of documentation, the IRS denied the entire deduction and the Taxpayer was required to capitalize the costs.
- ▶ NOTE: This harsh result is a cautionary tale for taxpayers who choose not to elect the safe harbor—the IRS is apparently requiring taxpayers to once again assemble the voluminous documentation that was required prior to the issuance of Rev. Proc. 2011-29.

IRS Guidance on Eligibility for Safe Harbor Election

- ▶ As noted, Rev. Proc. 2011-29 applies only to transactions that are covered transactions as defined in Treas. Reg. Section 1.263(a)-5(e)(3) and allows taxpayers to elect to treat 70 percent of the success-based fees paid or incurred by the taxpayer in taxable years ended on or after April 8, 2011 as amounts that do not facilitate a transaction under Treas. Reg. Section 1.263(a)-5 while requiring that the remaining 30 percent of the success-based fees be capitalized.
- ▶ Since the issuance of Rev. Proc. 2011-29, the IRS has provided guidance in interpreting various components of the safe harbor and specifically, in what situations is a Taxpayer allowed to make the election.

No Election Permitted in Certain Transactions -CCM 201234027

- ▶ Though offset from the total amount of a success-based fee, the nonrefundable milestone payments were not contingent on the successful closing of the transaction but instead were guaranteed payments incurred upon the occurrence of specified milestones or upon some other date or event.
- ▶ Because the nonrefundable milestone payments made to a service provider for activities performed with respect to a covered transaction are not, themselves, success-based fees, they do not qualify for the Safe Harbor provided in Rev. Proc. 2011-29.
- ▶ However, taxpayer may make a Safe Harbor election to allocate the remaining \$8 million payable as a success-based fee.

No Election Permitted - CCA 201624021

- ▶ *CCA 201624021 (July 8, 2015)*
 - Taxpayer, an S-Corporation target corporation, sought to elect the safe harbor for success based fees incurred in a transaction in which they elected under Section 338(h)(10) to treat a stock sale as a deemed asset sale.
 - The Service stated that “[w]ith regard to an acquired taxpayer in an asset acquisition, the transaction is not a ‘covered transaction’ under Treas. Reg. § 1.263(a)-5(e)(3)”.

Eligibility for Safe Harbor Election

- In denying the ability of the target corporation to make the safe harbor election, the Service focused on the language of the covered transaction rule in Treas. Reg. § 1.263(a)-5(e)(3)(i) that “uses the phrase ‘taxable acquisition *by the taxpayer,*’” (*emphasis in original*) and found that in the present case, the “taxpayer” did not make a taxable acquisition.
- Here the taxpayer attempting to make the safe harbor election was the seller of the assets, not the buyer. The Service did acknowledge that the taxpayer could perform a traditional analysis with respect to its transaction costs and if consistent with its facts, could document that a portion of the success based fees at issue were properly deductible.

What if you “miss” the safe-harbor election?

- ▶ Reg. § 301.9100-3 – Ruling Request
- ▶ Private letter ruling request
- ▶ As of February 2, 2019, user fee is \$10,900
- ▶ To obtain relief, a taxpayer must show—
- ▶ It acted reasonably and in good faith;
- ▶ Requests relief prior to discovery by IRS of taxpayer’s failure to make the regulatory election;
- ▶ Failure to make the election due to events beyond the taxpayer’s control;
- ▶ Was unaware of the election (assuming taxpayer exercised reasonable diligence);

9100 Relief for missed elections

- ▶ Reasonably relied on written advice from IRS; or
- ▶ Reasonably relied on qualified professional and professional failed to make or advise taxpayer to make the election
- ▶ Granting relief would not prejudice the interest of the government
- ▶ Taxpayer's aggregate tax liability would be lower for all years to which election applies than if election had been made timely (taking into account time value of money)
- ▶ Several recent IRS Rulings allowing additional time to file the safe harbor election—
 - For example, see, *PLR 201711003*, *PLR 201544013*, *PLR 201516012*, *PLR 201338108*

Pre-View of Third Presentation

- ▶ Now that we have identified the background of evaluating Transaction Costs, reviewed the history of the rules that apply, defined the significance of the structure of the transaction, and provided examples of what constitutes a “transaction cost, provided the list of the documents required to perform the analysis, evaluated the specific types of costs, and types of service providers, and reviewed the safe harbor election available under Rev. Proc. 2011-29, we will focus on post-allocation issues including:
 - Preparing the Documentary File to report an allocation of your transaction costs on your tax return.
 - Situations where one party incurs a cost, and another party pays such costs and intends to take such costs into account on their tax return.
 - We will discuss what to do with capitalized costs and if there are any recovery mechanisms.

Questions & Answers

Q&A

Cisco Webex Events

File Edit View Communicate Participant Event Help

BD
Brian Dolan (Host)

Viewing Pepper Hamilto... ▾

Click here to send questions to us

Pepper Hamilton Webinar

Audio Broadcast
24.7 Kbps
Pause Stop

Pepper Hamilton LLP
Attorneys at Law

Participants

- Panelist: 1
 - BD Brian Dol... (Host)
- Attendee:
 - BD Brian Dolan (me)

Q&A

Email dolanb@pepperlaw.com if interested in receiving a CLE form.

For more information, visit

www.pepperlaw.com