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TAXTALK

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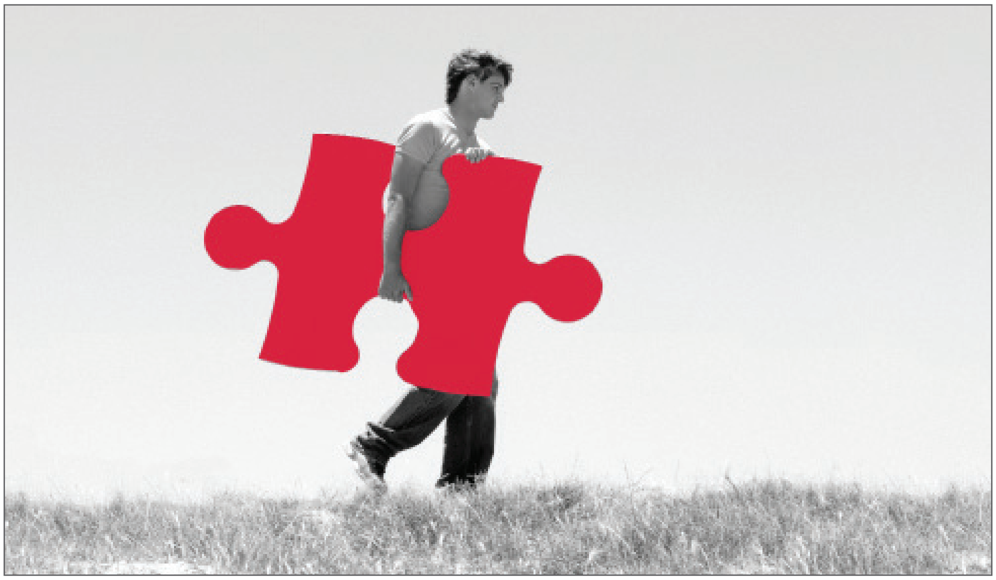
MORRISON FOERSTER



EDITOR'S NOTE

Things are getting crazy. No, we don't mean what's going on in the U.S. presidential campaign (although we do update you on the remaining candidates' tax positions in this issue of Tax Talk), but what's happening on the administrative law side of the tax house. In Q1, the IRS continued its ramped up rulemaking with regulations on broker reporting on debt instruments and OID on tax-exempt bonds, nonrecognition transfers of loss property to corporations, and partnership allocations of creditable foreign tax expenditures.[1] Shortly after the quarter ended, surprise regulations under Section 385[2] were issued as part of anti "inversion" guidance. As we reported in our Client Alert,[3] these regulations have potential to affect transactions far beyond inversions, however. Counterbalancing that IRS activity is a serious upswing in talk about challenging regulations.[4] While this issue has always been around, last summer's decision in Altera[5] stoked the fire. Looking around at what tax advisors are speaking and writing about, some are gearing up for a massive attack on regulations. Whether clients have the same fervor, litigation budget, and willingness to challenge the government is another question.

1 This follows last fall's avalanche of Treasury regulations, see Tax Talk Volume 8 Issues 3, available at http://www.mofo.com/~/media/Files/Newsletter/2015/11/151103TaxTalk.pdf.

2 All section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

3 Our Client Alert on the proposed Section 385 regulations is available at http://www.mofo.com/~/media/Files/ClientAlert/2016/04/160412IRSDebtEquityRegulations.pdf.

4 See Marie Sapirie, *Altera* Alters the Landscape for Reg Challenges, Tax Notes Today 2015 TNT 158-1, (Aug. 17, 2015); Susan Simmons, Year in Review: *Altera* Changes the Game, Tax Notes Today, 2015 TNT 248-4 (Dec. 28, 2015); Michael L. Schler, *Altera* and the Proposed Debt-Equity Regulations, Tax Notes Today2016 TNT 84-13, (May 2, 2016).

5 *Altera Corporation and Subsidiaries v. Commissioner*, 145 T.C. No. 3 (2015).

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On a quieter note, this issue of Tax Talk covers two IRS rulings on real estate investment trusts, proposed Section 305(c) regulations that contain new rules for reporting and withholding when the conversion ratio is changed on convertible debt, the IRS reconsideration of a 2016 ruling on bad boy guarantees, and more.

IRS PUBLISHES PROPOSED SECTION 305(C) REGULATIONS

On April 12th, the IRS published proposed regulations under Section 305(c) that address the treatment of deemed dividends to holders of stock and rights to acquire stock. If finalized as proposed, these rules would impact issuers and holders of instruments that provide for adjustments in the case of corporate distributions, including convertible bonds and warrants.

Under Section 305, a distribution of stock or stock rights by a corporation to its shareholders is generally not included in the shareholder's gross income, except in certain circumstances. For example, a distribution of stock rights to a holder of a convertible security that compensates the holder for an actual distribution to shareholders is generally considered a taxable deemed distribution and is subject to the general rules regarding taxable distributions and dividends. These types of adjustments are common for instruments that are convertible into corporate stock, such as convertible bonds.

The regulations do not propose new rules regarding whether a conversion adjustment results in a taxable exchange—the preamble to the proposed regulations states that it has been the position of the Treasury Department and the IRS for over 40 years that an increase in the conversion ratio of a convertible debt instrument is treated as a deemed distribution. Instead, the proposed regulations clarify the amount and timing of the deemed distribution.

Under the current regulations, it is unclear whether a holder that receives additional rights to acquire stock must include in income the fair market value of the right or the fair market value of the underlying stock itself. The proposed regulations clarify that a deemed distribution of rights to acquire stock is best viewed as a distribution of additional rights to acquire stock, the amount of which is the fair market value of the right itself. However, the preamble states that, for deemed distributions that occur before final regulations are published, the IRS will not challenge taxpayers that use the fair market value of the underlying stock.

The proposed regulations also clarify that the timing of a deemed distribution that results from a conversion adjustment is the time the adjustment occurs, in accordance with the terms of the instrument, but in no event later than the actual distribution that triggers the adjustment.

Deemed distributions that result in taxable income to non-U.S. holders of convertible securities pose challenges to withholding agents, who are obligated to withhold and remit tax even though holders do not receive a cash payment. The proposed regulations provide a limited exception for withholding agents, who would not be required to withhold on deemed distributions unless either (i) the issuer of the instrument satisfies its reporting obligations with respect to the deemed distribution (for example, by providing notice to holders or by posting information on its website) or (ii) the withholding agent has actual knowledge of the deemed distribution.

IRS BACKTRACKS ON RECENT "BAD BOY" GUARANTEE MEMORANDUM

Earlier this year, a legal memorandum by the Internal Revenue Service ("IRS") Office of Chief Counsel, CCA 201606027 (the "Memorandum"), concluded that a so-called "bad boy guarantee" provided by a sponsor of a real estate partnership could cause an otherwise non-recourse financing to be treated as recourse for tax purposes. The Memorandum came as a surprise to many in the real estate community as taxpayers typically have treated otherwise non-recourse loans as non-recourse for partnership basis and loss allocation purposes even if there was a bad boy guarantee, given the low risk that the events triggering the guarantee obligation would occur.

Whether partnership liabilities are characterized as recourse or non-recourse is important because a partner's tax basis in its partnership interest includes the partner's share of partnership liabilities. A non-recourse liability of the partnership generally increases the tax basis and at-risk investment of each of the partners in proportion to their share of profits or capital, whereas a recourse liability only increases the tax basis and at-risk investment of the partner who bears the risk of loss with respect to the liability. Liabilities are treated as being recourse to a partner if that partner bears the so-called "risk of loss" in the event that the partnership fails to satisfy the liability. In determining whether a partner bears the risk of loss with respect to a partnership liability, the partnership

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tax rules look to whether a partner has an obligation to repay the liability upon a constructive liquidation of the partnership, taking into account all statutory and contractual obligations (including a partner's guarantee of the debt). However, under Treas. Reg. Section 1.752-2(b)(4), a partner's guarantee obligation is disregarded "if, taking into account all the facts and circumstances, the obligation is subject to contingencies that make it unlikely that the obligation will ever be discharged" (a "Disregarded Guarantee"). Further, if an "obligation would arise at a future time after the occurrence of an event that is not determinable with reasonable certainty, the obligation is ignored until the event occurs."

In the Memorandum, partnership *X* and its subsidiaries incurred several non-recourse loans (the "Loans"). In connection with the loans, one of *X*'s members (the "Guarantee Partner") entered into a personal guarantee (the "Guarantee") that would be triggered upon any of the following conditions (the "Conditions"):

1. The co-borrowers fail to obtain the lender's consent before obtaining subordinate financing or transfer of the secured property;
2. Any co-borrower files a voluntary bankruptcy petition;
3. Any person in control of any co-borrower files an involuntary bankruptcy petition against a co-borrower;
4. Any person in control of any co-borrower solicits other creditors to file an involuntary bankruptcy petition against a co-borrower;
5. Any co-borrower consents to or otherwise acquiesces or joins in an involuntary bankruptcy or insolvency proceeding;
6. Any person in control of any co-borrower consents to the appointment of a receiver or custodian of assets; or
7. Any co-borrower makes an assignment for the benefit of creditors or admits in writing or in any legal proceeding that it is insolvent or unable to pay its debts as they come due.

In analyzing the loan, the IRS concluded that, generally, a bona fide guarantee that is enforceable under local law is sufficient to cause the guaranteeing partner to be treated as bearing the risk of loss with respect to the applicable liability. In addition, the IRS argued that upon a constructive liquidation of partnership X, it would be reasonable to assume that one or more of the Conditions, more likely than not, would be met, in which case the Guarantee Partner would be personally liable to repay the Loans. Thus, the IRS concluded that the Guarantee was not a Disregarded Guarantee, and the Loans should be treated as recourse liabilities for partnership tax purposes and should only increase the tax basis and at-risk investment of the Guarantee Partner.[6]

However, recently the IRS released AM 2016-001, which represents a reversal of the prior Memorandum, and the IRS' reasoning now aligns with the industry practice of treating these bad boy guarantees as contingencies unlikely to occur that are disregarded under Treas. Reg. Section 1.752-2(b)(4). In AM 2016-001, the IRS considers the same bad boy guarantees as the prior Memorandum and concludes that an important aspect of these carve-outs is that the bad acts that they seek to prevent are within the control of guarantor. The IRS reasons, because it is in the economic self-interest of the guarantor to avoid committing the bad acts and subjecting itself to liability, the guarantor is unlikely to voluntarily commit such acts. However, the IRS explains that condition #7 deserves a further discussion because it could be interpreted as giving the lender the ability to cause the guarantor to commit one of the bad acts. For example, if a loan agreement required the borrower to provide the lender with periodic written financial reports, and those reports revealed that the borrower was insolvent, the lender might argue that those reports constituted a written admission of insolvency.

The IRS suggests this is an inappropriate interpretation of such an event because, in the commercial real estate finance industry, bad boy guarantees are not intended to allow the lender to require an involuntary action by the guarantor or place the guarantors in circumstances that would require them to involuntarily commit a "bad act." Rather, the fundamental business purposes behind these carve outs and the intent of the parties to such agreements is to prevent actions by the guarantor that could make recovery on the debt more difficult. Thus, the IRS concludes, bad boy guarantees should be interpreted consistently with that purpose and intent in mind, and because it is not in the economic interest of the guarantor to commit the bad acts described in the typical bad boy guarantees, it is unlikely that the contingency (the bad act) will occur and the contingent payment obligation should be disregarded under Treas. Reg. Section 1.752-2(b)(4). Therefore, unless the facts and circumstances indicate otherwise, a typical bad boy guarantee provision that allows the guarantor to avoid committing the enumerated bad act will not cause an otherwise nonrecourse liability to be treated as recourse for purposes of Treas. Reg. Sections 752 and 1.752-2(a) until such time as the contingency actually occurs.

6 For a fuller discussion of CCA 201606027, *see* http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160322BadBoyGuarantees.pdf.

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FAA 20161101F: LOW-RISK TAX CREDIT PARTNERSHIP INVESTOR ISN'T BONA FIDE PARTNER

In a heavily redacted Field Attorney Advice Memorandum (FFA 20161101F), the IRS concluded that a taxpayer did not own a bona fide partnership interest in an investment that allocated to the taxpayer Section 45 refined coal credits. The investment involved a limited liability company (LLC) taxed as a partnership that owned and operated a facility that produced refined coal. Under the LLC agreement, the taxpayer was allocated future refined coal tax credits and was obligated to make future contributions contingent on the amount of coal produced, and by extension, the amount of tax credits generated. Furthermore, the LLC agreement indemnified the taxpayer in the event that the tax credits were disallowed.

The IRS used the *Culbertson*[7] test to examine whether the investment was a bona fide partnership interest for U.S. federal income tax purposes. Under the *Culbertson* test, an interest in an entity constitutes a partnership interest if, based on the facts and circumstances, the parties intended to join together in the present conduct of the enterprise. In looking beyond the form of the transaction and instead examining the facts and circumstances, the IRS referred to various cases, including *Historic Boardwalk Hall, LLC v. Commissioner*.[8] Factors such as contributions contingent on the production of coal and the tax credit indemnification supported a finding that the taxpayer lacked entrepreneurial risk and upside potential separate from receipt of the tax credits. Furthermore, the promotional materials provided by the parties strongly indicated that the parties were not interested in a joint endeavor to operate a profitable refined coal facility. The materials stated that the taxpayer was not expected to be "out-of-pocket" from the investment and calculated the taxpayer's benefits based on the tax benefit instead of any expectation of profit from the production of the refined coal. Finally, the IRS determined that the relationship between the parties was akin to a buyer and seller of tax credits, which also supported a finding that the taxpayer was not a bona fide partner. Based on these facts and circumstances, the IRS concluded that a taxpayer did not own a bona fide partnership interest.

7 *Commissioner v. Culbertson*, 337 U.S. 733 (1949).

8 *Historic Boardwalk Hall, LLC v. Commissioner*, 694 F.3d 425 (3d Cir. 2012).

PLR 201614026 PUTTING BEARER STUDENT LOANS INTO A LIMITED PARTNERSHIP TO CREATE REGISTERED INSTRUMENTS FOR FEDERAL INCOME TAX PURPOSES

Recent Private Letter Ruling 201614026 provided some guidance on whether interests held in a partnership that acquires and holds student loans be considered obligations in registered form. Section 163(f)(1) disallows a deduction for interest on any registration required obligation unless the obligation is in registered form. Section 1.871-14(a) provides, subject to some exceptions, no tax shall be imposed on interest paid to a non-U.S. person on an obligation in registered form. Thus, the answer to the question has important consequences for a foreign investor's ability to qualify for the portfolio interest exemption. According to Section 5f.104-1(c)(1), an obligation is considered in registered form if:

(i) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument to the issuer in exchange for a new instrument or a reissuance by the issuer of the old instrument to a new holder;

(ii) the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent); or

(iii) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and may be transferred through most of the methods described in (i) and (ii) above.

Section 5f.103-1(c)(2) provides that an obligation will be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry which is a record of ownership that identifies the owner of an interest in the obligation. With respect to an interest in a grantor trust holding a pool of mortgage loans, Section 1.1635T(d)(1) provides that an interest (a "pass-through certificate") in a trust that is treated as a grantor trust is considered to be an obligation in registered form if the pass-through certificate is in registered form "without regard to whether any obligation held by the fund or trust to which

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the pass-through certificate relates" is in registered form. Thus, the "registration required obligation" is the certificate evidencing the interest in the entity rather than the underlying obligations.

PLR 201614026 involved a Taxpayer that used capital contributions from its owners to acquire interests in a limited partnership (the "Partnership") that would have the ability to acquire student loans and use principal pay downs on the loans it held to finance acquisitions of additional student loans. These student loans were not in registered form within the meaning of Section 5f.103-1(c); however, the interests in the Partnership were only transferable pursuant to procedures described in 5f.103-1(c)(1). For instance, under the terms of the limited partnership agreement, the general partner was obligated to keep a full and accurate register of the interests in the Partnership and only those persons that appeared on this register would be entitled to a distributive share of the Partnership's income with respect to the student loans. In addition, interests in the Partnership could only be transferred on the written consent of the general partner. Thus, the Partnership interests were similar to the pass-through certificate of a mortgage pool, except the Partnership was not treated as a grantor trust. Nevertheless, the PLR concluded that interests in a limited partnership were similar evidences of interest in a similar pooled fund under Reg. 1.163-5T(d)(1), and such interests would be considered obligations in registered form if the requirements of Section 5f.103-1(c)(1) were satisfied.

SUPREME COURT RULES ON REIT DIVERSITY-OF-CITIZENSHIP JURISDICTION CASE

In our last issue of Tax Talk,[9] we reported that the Supreme Court had granted certiorari in *Conagra Foods, Inc. v. Americold Logistics, LLC*. In that case, the U.S. Tenth Circuit Court of Appeals held that the citizenship of a Maryland Title 8 Trust REIT must be determined by the citizenship of its shareholders for the purposes of determining whether a federal court has diversityofcitizenship jurisdiction. On March 7, 2016, the Supreme Court affirmed the Tenth Circuit's holding.[10] The Court reasoned that since in Maryland a real estate investment trust ("REIT") is an unincorporated business trust or association in which property is held and managed for the benefit of any person who may become a shareholder, and similar to joint-stock companies or partnerships the shareholders of a Maryland REIT have ownership interests and votes in the trust, the shareholders are in a similar position to the shareholders of a joint-stock company or the partners of a partnership. The Court stated that since it has held that shareholders of joint-stock companies and the partners of a limited partnership are members of the relevant entities, and owners of Maryland REIT shares are in a similar position, a Maryland REIT's members include its shareholders for the purposes of diversity-of-citizenship jurisdiction.

PLR 201609004: PROPERTY SOLD BY REIT AS PART OF A LIQUIDATION WASN'T HELD PRIMARILY FOR SALE TO CUSTOMERS

Private Letter Ruling 201609004 addresses the issue of whether a proposed sale of a REIT's assets pursuant to a plan of liquidation was property held by the REIT primarily for sale to customers in its ordinary course of business and therefore a prohibited transaction pursuant to Section 857(b)(6)(B). Section 857(b)(6)(A) imposes a 100 percent tax on a REIT's net income from prohibited transactions. Section 857(b)(6)(B) defines a prohibited transaction as the sale or other disposition of property (that is not foreclosure property) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. The taxpayer represented that (1) it acquired the properties with the intent to own for a long-term holding period, and to derive its profits from capital appreciation and rental income; (2) the disposition of the properties was pursuant to a plan of liquidation; (3) all rental properties had operated for at least two years at the time of the proposed sale; and (4) the taxpayer would use one or more independent third party brokers to dispose of the properties. Based on the facts, the IRS ruled that such proposed sale of assets did not constitute prohibited transactions.

PLR 201605005: CERTAIN SUBPART F AND PFIC INCLUSIONS ARE QUALIFYING INCOME TO A REIT

Private Letter Ruling 201605005 addresses the issue of whether Subpart F inclusions and PFIC inclusions would be treated as qualifying income under Section 856(c)(2), the REIT gross income 95 percent test. The

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9 *See* Volume 8, No. 4 January 2016 (http://www.mofo.com/~/media/Files/Newsletter/2016/02/160201TaxTalk.pdf).

10 *Americold Realty Tr. v. ConAgra Foods, Inc.*, 136 S. Ct. 1012, 194 L. Ed. 2d 71, 84 U.S.L.W. 4123 (2016).

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taxpayer was a corporation that had elected to be taxed as a REIT and operated in foreign countries through foreign subsidiaries that were controlled foreign corporations ("CFCs") or passive foreign investment companies ("PFICs") for U.S. federal income tax purposes. Section 856(c)(2) provides that, in order for a corporation to qualify as a REIT, as least 95 percent of the corporation's gross income must be derived from certain enumerated sources, which include dividends, interest, rents from real property, gain from the sale or other disposition of stock, securities, and real property (other than property in which the corporation is a dealer), abatements and refunds of taxes on real property, income and gain derived from foreclosure property, and certain commitment fees. The IRS ruled that (i) under Section 856(c)(5)(J)(ii), the Subpart F inclusions were considered gross income that qualifies for purposes of Section 856(c)(2), and (ii) under Section 856(c)(5)(J)(ii), the PFIC inclusions were considered gross income that qualifies for purposes of Section 856(c)(2).

IRS ISSUES FINAL REGS COVERING BROKER REPORTING ON DEBT INSTRUMENTS & OID ON TAX-EXEMPT OBLIGATIONS

On March 7, 2016, the IRS published final regulations (T.D. 9750) under Sections 6045, 6045A and 6049, which provide guidance on information reporting by brokers for transactions involving debt instruments and options, including the reporting of original issue discount ("OID") on taxexempt obligations, the treatment of certain holder elections for reporting a taxpayer's adjusted basis in a debt instrument, and transfer reporting for Code Section 1256 options and debt instruments. On March 13, 2015, the IRS published final regulations under these same sections, along with temporary and proposed regulations relating to information reporting. The 2016 final regulations generally adopt those proposed and temporary regulations, and have a few highlights.

First, the final regulations adopt the rules in the temporary regulations covering broker reporting of the holder constant yield election for accruals of market discount. Under Section 1276(b)(2), a customer is permitted to elect to accrue market discount on the constant yield method rather than the ratable method. The final regulations provide that for debt instruments acquired on or after January 1, 2015, brokers are required to assume that a customer has elected to determine accrued market discount using a constant yield method unless the customer notifies the broker otherwise. If a customer doesn't want to use a constant yield method to determine accrued market discount, the customer must notify the broker in writing that the customer wants the broker to use the ratable method by the end of the calendar year in which the customer acquired the debt instrument in an account with the broker.

Second, in order to coordinate the reporting of OID under Section 6049 with the reporting of basis for tax-exempt obligations under Section 6045, the final regulations provide that for taxexempt obligations acquired on or after January 1, 2017, a payor must report the daily portions of OID on a tax-exempt obligation. The payor must determine whether a tax-exempt obligation was issued with OID, and the daily portions are to be determined as if Section 1272 and Treas. Reg. 1272-1 applied to the tax-exempt obligation. Since amortized acquisition premium offsets OID, the final regulations also require payors to report amortized acquisition premium on tax-exempt obligations. Brokers may either report a net amount of OID that reflects the offset of the OID by the amount of amortized acquisition premium allocable to the OID or a gross amount for both OID and amortized acquisition premium.

Finally, the final regulations provide that a transferring broker is required to provide a transfer statement upon the transfer of a Section 1256 option to ensure that the receiving broker has all the information required for purposes of Section 6045. The transfer statement must include the original basis of the option and fair market value information to help ensure that the receiving broker is reporting an amount of realized, but unrecognized gain or loss from the prior year that is consistent with the amount reported in the prior year by the transferring broker.

UPDATED PRESIDENTIAL CANDIDATE TAX POSITIONS

The field of presidential candidates has narrowed since we last covered the candidates' tax plans.[11] Below is additional information about the tax plans of the three remaining candidates.

11 *See* Volume 9, No. 4 January 2016 (http://www.mofo.com/~/media/Files/Newsletter/2016/02/160201TaxTalk.pdf).

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CANDIDATE	INDIVIDUAL INCOME TAX	CAPITAL GAINS TAX	ESTATE TAX	CORPORATE TAX	INTERNATIONAL TAX
Hillary Clinton (D)[9]	Minimum effective tax rate of 30% for income above $1 million; 4% surcharge for income above $5 million	For individuals in the top tax bracket, capital gains tax rate of 39.6% for investments held for two years or less, with rates gradually decreasing to 20% for investments held for more than six years	Increases the estate tax rate to 45% and reduces the exemption to $3.5 million	Not specified	Not specified
Bernie Sanders (D)[13]	Adds four new income tax brackets for high-earning households, with rates up to 52% for income above $10 million	Taxes capital gains at ordinary income rates	Increases the estate tax rate to 45%-65% depending on value of the estate and reduces the exemption to $3.5 million	Not specified	Ends the deferral of tax on foreign income for corporations
Donald Trump (R)[15]	Four tax brackets for individual income tax, with top marginal rate of 25% on income above $150,000 for single filers ($300,000 for married filers)	Taxes long-term capital gains and qualified dividends at a top marginal rate of 20%	Eliminates estate tax	Flat tax rate of 15%; taxes pass-through business income at 15%	Ends the deferral of overseas corporate income; enacts a deemed repatriation of foreign income at a 10% rate

12 http://www.wsj.com/articles/hillary-clinton-proposes-4-income-tax-surcharge-for-wealthy-americans-1452552083?cb=logged0.5793573611746292; http://www.wsj.com/articles/clinton-to-propose-rise-in-capital-gains-taxes-on-short-term-investments-1437747732; http://blogs.wsj.com/washwire/2016/01/12/hillary-clintons-next-tax-target-estates/.

13 http://www.bloomberg.com/politics/articles/2015-06-11/bernie-sanders-eyes-top-tax-rate-of-more-than-50-percent; http://www.nytimes.com/2016/01/22/upshot/sanders-makes-a-rare-pitch-more-taxes-for-more-government.html; http://www.forbes.com/sites/ashleaebeling/2015/06/25/bernie-sanders-calls-for-65-top-estate-tax-rate/#5457dc0c41f1;

https://berniesanders.com/the-sanders-corporate-tax-reform-plan/.

14 https://www.donaldjtrump.com/positions/tax-reform.

MOFO IN THE NEWS; AWARDS

Morrison & Foerster was named the 2016 Equity Derivatives Law Firm of the Year at the EQDerivatives Global Equity & Volatility Derivatives Awards. Morrison & Foerster has been nominated for the 2016 Chambers USA Awards for Excellence in three categories, including Tax. These awards are based on Chambers & Partners' research for the 2016 edition of Chambers USA: America's Leading Lawyers for Business and reflect a law firm's pre-eminence in key practice areas. Morrison & Foerster was also shortlisted for 2016 Americas Law Firm of the Year, US Law Firm of the Year – Transactions, and US Law Firm of the Year – Regulatory by GlobalCapital for its Americas Derivatives Awards. In 2015, Morrison & Foerster was named Best Law Firm for Derivatives – US by GlobalCapital at its Americas Derivatives Awards. myCorporateResource.com awarded MoFo with the 2015 Client Content Law Firm of the Year Award in recognition of law firms that produce world-beating, client-facing content.

- On March 30, 2016, Senior Of Counsel Hillel T. Cohn hosted a teleconference session entitled "Current Practices and Issues for Foreign Broker-Dealers Under Rule 15a-6 in 2016." Topics included: Summary of Rule 15a-6 requirements; risks and responsibilities of acting as a chaperoning broker; practical issues in intermediating Rule 144A and other transactions; benefits of an intermediary agreement; and dealing with retail customers under Rule 15a-6.
- On March 29, 2016, Partner James Tanenbaum led "Session 5: Innovation" at the "Israel Dealmakers Summit 2016" in Redwood City, CA. The summit is the premier Israel-focused business event of the year representing a meticulously curated gathering of global corporations, investors, dealmakers, and entrepreneurs converging from around the world.
- On March 17, 2016, Partner Anna Pinedo, Partner Oliver Ireland, Partner Remmelt Reigersman, Partner Obrea Poindexter, Of Counsel Sean Ruff, and Of Counsel James Schwartz hosted Morrison & Foerster's

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"6th Annual Financial Services and Regulatory Conference" in Charlotte, NC. Partner Remmelt Reigersman spoke on the "Tax Developments and Emerging Issues" panel. Topics included: Dividend equivalent discussion; the IRS basket notice; and other recent developments. Partner Obrea Poindexter and Of Counsel Sean Ruff hosted a panel entitled "A FinTech Discussion." Topics included: Alternate lending platforms (e.g., Marketplace Lending, etc.); money transmission; digital wallets and related topics; an update on virtual currencies, cryptocurrencies, and ledger related technologies (e.g., Blockchain); and partnerships between non-bank FinTech companies and banks. During the "Fed's Long Term Debt, TLAC and Clean Holding Company Requirement and its Effects on Financial Institutions Issuers and the Debt Capital Markets" panel, Partner Anna Pinedo and Partner Oliver Ireland discussed: A review of comments submitted to the Federal Reserve Board on its notice of proposed rulemaking; single point of entry resolution; preparing to comply, including addressing near TLAC eligible securities, setting up new issuance platforms, etc.; the FSB principles and implementation of the FSB principles and the BRRD in Europe; and how the FRB's and the FSB's requirements will generally affect the bank-funding markets. Partner Anna Pinedo hosted the "Other Basel and FSB Related Developments" panel. Topics included: Basel focus on "shadow banking;" requirements for securities lending transactions; the Fed's countercyclical buffer proposal; securitization updates; and regulation of benchmark indices. Of Counsel James Schwartz hosted a panel entitled "A Derivatives Update." Topics included: The margin rules for uncleared swaps and their effects on dealers; cross border developments and their effect on U.S. counterparties; the ISDA 2015 Universal Resolution Stay Protocol and related matters; and status of SEC rules for security-based swaps and what lies ahead.

- On March 15, 2016, Partners Anna Pinedo and Remmelt Reigersman spoke on a panel entitled "Legal, Regulatory, Compliance and Tax Update" at the Structured Products Association's "12th Annual Spring Conference on Structured Investments" in New York, NY. This is the only conference that focuses on the voice of the distribution side of the structured investments industry.

- On March 14, 2016, Partner Jeremy Jennings-Mares spoke on a panel entitled "The Regulatory Speed Round" at the "9th Annual IMN Global Covered Bonds Conference" in London, U.K. Topics included: Harmonization of the CB space: why? Challenges and opportunities for the European and global market participants; New regulatory environment: CRR, BRRD, Solvency 2, LCR what are the implications for the future of the CB space?; and global evolution of the product: should Basel capture and recognize the significance of the new global CB developments?

- On March 10, 2016, Partner Peter Green, Partner Jeremy Jennings-Mares, and Of Counsel James Schwartz hosted a teleconference entitled "Cross-Border Derivatives Update." The session provided an update on the state of play of derivatives regulation on both sides of the Atlantic. Topics included: How U.S. and EU regulations approach the cross-border application of substantive requirements; the recent U.S.-EU accord regarding the regulation of central counterparties; and substantive regulatory requirements for uncleared swaps from a cross-border perspective, including clearing, exchange trading, and margin.

- On March 9, 2016, Partner Marty Dunn, Partner David Lynn, and Partner Anna Pinedo hosted a teleconference entitled "FAST Act Securities Law Provisions." The speakers discussed the FAST Act, which amended certain provisions of the JOBS Act, the Securities Act and the Exchange Act. Topics included: The changes to the IPO on-ramp provisions and the Staff C&DIs; considerations for issuers planning their IPOs; forward incorporation in Form S-1 registration statement and the SEC's interim final rules; the harmonization of the Section 12(g) threshold for savings and loan holding companies and the related C&DIs; the new Section 4(a)(7) resale exemption; and deciding among available resale exemptions.

- On March 8, 2016, Partner Michelle Jewett and Partner Shane Shelley hosted a teleconference entitled "PATH Act: Major Changes to the REIT and FIRPTA Rules." Topics included: Prohibition on tax-free REIT spinoffs by non-REIT entities; exemption from FIRPTA for foreign pension plans and certain publicly traded companies investing in U.S. real estate; expansion of exemption for investors in publicly traded REITs; favorable technical changes, including the elimination of the "preferential dividend" rules for public REITs, the introduction of a new "prohibited transactions" safe harbor, a reduction in the recognition period for built-in gains on REIT conversions, the expanded use of REIT hedges and an expansion of the definition of qualifying "real estate assets"; and liberalization of the use of taxable REIT subsidiaries ("TRSs") in some situations but constriction of their use for REIT qualification purposes.

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- On March 3, 2016, Partner Ze'-ev Eiger and Associate Brian Hirshberg hosted a teleconference entitled "Foreign Issuers Filing a Form 20-F." The speakers discussed: Benefits available to foreign private issuers ("FPIs"); Form 20-F requirements and recent developments; accounting considerations; corporate governance considerations; specialized disclosure requirements; and recent SEC disclosure focus areas.

- On February 25, 2016, Partner James Tanenbaum and Partner Anna Pinedo hosted a seminar entitled "Strategic Uses of PIPE Transactions" in New York, NY. Topics included: The basics of PIPE transactions; the Nasdaq considerations; PIPEs for acquisition financing; PIPEs as part of a recapitalization; and PIPEs for selling stockholders.

- On February 24, 2016, Partner Anna Pinedo and Partner David Lynn hosted an IFLR webinar entitled "The New Dynamic: Exempt Securities Offerings in the United States and Resales of Restricted Securities." Topics included: How the JOBS Act has affected private placements; late-stage private placements; the Regulation A market; the final crowdfunding regulations; other exempt offering developments, such as intrastate offering changes; and resales of restricted securities through private secondary market transactions as well as reliance on new Section 4(a)(7).

- On February 23, 2016, Partner Anna Pinedo hosted a seminar entitled "Masterclass: Structured Alternatives to Structured Notes" in New York, NY. Topics included: The issuance of structured notes from bank holding company subsidiaries that are finance companies, the issuance of structured notes through a repackaging vehicle and the disclosure and reporting requirements entailed in a bond repackaging, as well as potential Volcker Rule considerations, the issuance of custodial receipts, and the use of unit investment trusts.

- On February 17, 2016, Partner Anna Pinedo and Partner Oliver Ireland led a PLI webinar entitled "Addressing the TLAC, the Long-Term Debt Requirement, and the Clean Holding Company Requirements." The session focused on the Federal Reserve Board's proposed long-term debt requirement, a TLAC requirement and a clean holding company requirement for U.S. G-SIBs, and the intermediate holding companies of foreign (non-U.S.) G-SIBs subject to an IHC requirement. Topics included: The FRB's proposed requirements; the principal comments raised by market participants and likely FRB responses; the principal differences between the FSB's and the FRB's approach; planning to comply; potential effects for foreign banks subject to both regimes; and anticipated effect on how banks will fund going forward.

- On February 12, 2016, Partner Jeremy Jennings-Mares led the "Law Firm Roundtable" at the "13th Annual Europe Structured Products & Derivatives Conference 2016" in London, U.K. Topics included: Product governance and Mifid 2: compliance, target market, and stress testing; priips and the Kid: and now every document needs to be in 12 languages: translating, scope of products, territoriality; updating existing products and implementing Priips intelligently; Prospectus Directive 3: was PD2 a waste of time and money?; and time to spend: implementation and the completion of stage 2 of the FCA review, and is this being done properly?

- On February 10, 2016, Partner Lloyd Harmetz hosted a teleconference entitled "Free Writing Prospectuses: Legal Principles and Best Practices." Topics included: The SEC rules and guidance governing the use of these documents; the intersection of these SEC rules with applicable FINRA regulations; practices that have emerged in the marketplace in connection with the drafting and use of FWPs; and the limitations imposed on the use of these documents by reporting companies that have lost their WKSI status.

- On February 9, 2016, Partner Anna Pinedo and Partner Ze'-ev Eiger hosted a teleconference entitled "FINRA Research Rules." Topics included: FINRA's new equity research rule (Rule 2241), which took effect on December 24, 2015, and new debt research rule (Rule 2242), which was proposed to take effect on February 22, 2016. Additional topics included the analyst settlement, the SEC's research rules, as well as recent enforcement matters and other developments.

- On February 4, 2016, Partner Jay Baris, Of Counsel Kelley Howes and Of Counsel James Schwartz hosted a teleconference entitled "The SEC Proposed Rules on Investment Company Use of Derivatives and Leverage: What It Could Mean for You." Topics included: Overview of rules; substantive limits on use of derivatives; derivatives risk management programs; new responsibilities for fund directors; and challenges for investment advisors and chief compliance officers and counsel.

- On February 4, 2016, Partner Anna Pinedo spoke at a symposium entitled "The Role of the CFTC in the Market" at The George Washington University Center for Law, Economics & Finance

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in Washington, D.C. regarding key concerns surrounding systemic risk related to the instruments and entities impacted by the CFTC.

- On February 2, 2016, Partner Remmelt Reigersman presented on current developments in the legal-regulatory-compliance landscape at the "8th Annual SPA and MoFo Structured Products Legal, Regulatory & Compliance Update 2016" in New York, NY. This presentation covered a wide range of topics related to structured products, including: Tax issues; addressing TLAC compliance through financing subsidiaries and other approaches; FINRA's and the OCIE's priorities for 2016; the use of derivatives by 40 Act entities; and what to expect in 2016.

- On January 25, 2016, Partner David Lynn chaired a session entitled "Cybersecurity: A Call to Action" at the "43rd Annual Securities Regulation Institute" in Coronado, CA. Topics included: Assembling the cyber response team; corporate governance implications; prebreach and post-breach disclosure concerns; and necessary organizational and compliance measures. On January 27, 2016, Partner Marty Dunn chaired a session entitled "Everything You Always Wanted to Know about Securities Law but Were Never Given the Chance to Ask."

- On January 22, 2016, Partner Anna Pinedo spoke on a panel entitled "Key Considerations in Derivatives and Structured Products and Collateral" at the New York City Bar Association's "A "How to Guide" to Basic Derivatives, Swaps Clearing & Structured Products" program. Topics included: Collateral posting and protection issues; bankruptcy and credit downgrade considerations; understanding netting of exposures, risk exposure, valuation, and risk: notional values, counterparty risk, pricing, and leverage; use of derivatives in M&A; and tax implications of various derivatives and structured notes.

- On January 21, 2016, Partner Brian Bates moderated a panel entitled "Growing the Market v. Beating the Competition" at the "Private Placements Industry Forum" in Aventura, FL. Partner Scott Ashton moderated the Real Estate "Universities" sector breakout session.

ABOUT MORRISON & FOERSTER

We are Morrison & Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, and Fortune 100, technology, and life sciences companies. We've been included on *The American Lawyer*'s A-List for 12 straight years, and the *Financial Times* named the firm number six on its 2013 list of the 40 most innovative firms in the United States. *Chambers USA* honored the firm as its sole 2014 Corporate/M&A Client Service Award winner, and recognized us as both the 2013 Intellectual Property and Bankruptcy Firm of the Year. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger.

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