

2016 HLB NATSG Conference

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Since Coral Gables... everything old is new again...e.g. defining:

Trade/business versus investment versus other treatments

Repair versus capital treatment

Debt versus equity characterization

Acceptable and effective discounting of values

Acceptable and effective tax rates/shelters

I. TAX HAVENS/SHELTERS

- **Panama Papers @ April (USA as haven #3)**

https://en.wikipedia.org/wiki/Panama_Papers

- **States' impact- BNA analysis- @ June (38-41):**

<http://src.bna.com/gbW>

- **BEPS and CbyC implementation proposals (OECD):**

<http://www.oecd.org/tax/transfer-pricing/public-consultation-on-transfer-pricing-matters-11-12-october-2016.htm>

<http://www.oecd.org/tax/beps/centre-for-tax-policy-and-administration-brochure.pdf>

- **IRS regulations @ June**

\$850,000,000 revenues test - see draft Form 8975

<http://news.cchgroup.com/2016/06/30/irs-issues-country-by-country-reporting-regulations-t-d-9773/>

II. SECTIONS 162, 263, 385, 2704

- **Section 162 - Trade/Business**

Control – deemed partnership - private equity – *Sun Capital* case

http://www.kslaw.com/imageserver/KSPublic/library/publication/2016articles/4-12-16_Talansky.pdf

Partners as employees - Rev. Rul. 69-184 - no de minimis exceptions

DRE wild card – partner/employee status-

<http://www.thetaxadviser.com/issues/2016/jul/temporary-regulations-prohibit-partners-being-employees.html>

“...the regulations did not include a specific example applying the general rule in the partnership context. Under this reading, which was not intended, some taxpayers have permitted partners to participate in certain tax-favored employee benefit plans....”

“...appropriate application of the principles of Rev. Rul. 69–184 to tiered partnership situations..... may be appropriate to permit partners to also be employees of the partnership.....impact on employee benefit plans....”

“... to make necessary payroll and benefit plan adjustments, these temporary regulations will apply on the later of: (1) August 1, 2016, or (2) the first day of the latest-starting plan year following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner”

- **Compensation/bonus/partner draws**

Thornton law firm:

<http://legalinsurrection.com/2016/10/elizabeth-warren-prime-recipient-of-questionable-law-firm-donations/>

- **Gift taxes and “ordinary course of business”**

Cases of *Redstone*:

<http://ustaxcourt.gov/UstclnOp/OpinionViewer.aspx?ID=10576>

<http://www.forbes.com/sites/peterjreilly/2015/12/12/sumner-redstone-liable-for-tax-on-long-ago-gift/#58c40cfd6258>

- **Section 263 – retailers/restaurants – new 75/25 rule**

Restaurants - piggybacking on a piggyback?

Rev Proc 2015-56 “Safe Harbor” for qualified buildings/remodel-refresh costs/projects

Follows lengthy 263 history:

Priority- 2004

Proposal -2006

Re-proposal -2008

Temporary- 2011

Final- 2013

<40% not “significant portion of major component”?

Form 3115- December 2015 revisions and updates to IRS audit guide:

<https://www.currentfederaltaxdevelopments.com/blog/2016/10/21/irs-releases-revised-audit-technique-guide-for-capitalization-of-tangible-property>

- **Section 385 – debt versus equity capital**

1969 TRA - enactment

1980 regulations - withdrawal

2016 regulations- preamble @ 75 pages

“Overreaching” arguments e.g. < 30 day trigger

<https://www.mwe.com/en/thought-leadership/publications/2016/10/salt-implications-debt-equity-regulations>

<http://www.ey.com/gl/en/services/tax/international-tax/alert--report-on-us-international-tax-developments---21-october-2016>

National Grid case @ June- collateral state laws interplay

<https://www.pwc.com/us/en/state-local-tax/newsletters/salt-insights/assets/pwc-massachusetts-no-debt-without-unconditional-obligation-to-pay.pdf>

Different status and groups @ states level e.g. C vs. S Corporation

- **Section 2704 - valuation discounting –proposed regulations**

<http://www.thetaxadviser.com/news/2016/aug/estate-valuation-discounts-201614941.html>

Upcoming AICPA resources < December IRS hearing

Effective dates/grandfathering issues?

I. **OTHER GOLDEN OLDIES- 2017 developments:**

R&D credits update/ payroll tax offsets /Form 8974 draft

DSUE/QTIP - allocations and elections for estates

Estate Forms 8971 change /Schedule A supplemental filings

Partnership & LLC audits/1982 TEFRA rules shift to BBA 2015

Strategic date of reform-1986 TRA redux-lower rates/broader bases