



**Section of Taxation**

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June 9, 2009

Hon. Douglas Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: Recommendations for 2009-2010 Guidance Priority List

Dear Commissioner Shulman:

The American Bar Association Section of Taxation welcomes the opportunity to provide recommendations for inclusion in the 2009-2010 Treasury-IRS Guidance Priority List. These recommendations represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

The enclosed list contains recommendations made by the members of various committees within the Section of Taxation. I hope you find the suggestions helpful as you formulate the new Priority Guidance List. The recommendations include items in the following areas of the practice:

Administrative Practice	Investment Management
Affiliated and Related Corporations	Partnerships and LLCs
Capital Recovery and Leasing	Real Estate
Civil and Criminal Tax Penalties	Sales, Exchanges and Basis
Corporate Tax	Tax Accounting
Employee Benefits	Tax Exempt Financing
Exempt Organizations	Transfer Pricing
Financial Transactions	U.S. Activities of Foreigners
Foreign Activities of U.S. Taxpayers	

We would be happy to discuss the recommendations with you or your staff, if that would be helpful.

Sincerely,

Stuart M. Lewis  
Chair - Elect, Section of Taxation

Enclosure

cc: Clarissa C. Potter, Acting Chief Counsel, Internal Revenue Service  
Michael F. Mundaca, Acting Assistant Secretary (Tax Policy), Treasury Department

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## **RECOMMENDATIONS FOR THE 2009-2010 TREASURY- IRS GUIDANCE PRIORITY LIST**

As requested in Notice 2009-43, the Section of Taxation of the American Bar Association has identified the following tax issues that should be addressed through regulations, rulings or other published guidance in 2009-2010. In each case, the name and contact information for a representative of the committee making the suggestion are provided.

### **ADMINISTRATIVE PRACTICE**

Fred Murray, Administrative Practice Committee, (202)861-4141, [counselor@att.net](mailto:counselor@att.net)

1. Guidance providing for the development of a process for higher level pre-assessment review of cases in which a section 6707A penalty is being proposed that would include a taxpayer conference or other appropriate method for a taxpayer to address the issues involved before the final assessment decision is made.<sup>1</sup>
2. Reproposed regulations updating section 10.34(a) of Circular 230, including to address the 2008 changes to section 6694 of the Internal Revenue Code. The Tax Section submitted comments on this topic on June 4, 2009.

### **AFFILIATED AND RELATED CORPORATIONS**

Devon M. Bodoh, Affiliated & Related Corporations Committee, (202)346-7888, [dbodoh@dl.com](mailto:dbodoh@dl.com)

1. Guidance on the application of sections 382(l)(5) and 382(l)(6) for consolidated groups.
2. Guidance to coordinate Notice 2003-65 and Regulation section 1.1502-91 (including determination of net unrealized built-in gain in the context of a holding company).

### **CAPITAL RECOVERY AND LEASING**

Susan Minasian Graiss, Capital Recover and Leasing Committee, (202)327-8782, [susan.grais@ey.com](mailto:susan.grais@ey.com)

1. Guidance regarding how section 48 applies to facilities that temporarily qualify for the credit under section 48(a)(5), which was enacted as part of the American Reinvestment and Recovery Act of 2009 (“AARA”) (including guidance on the definition of qualified property that is eligible for the credit).
2. Guidance regarding how section 50 applies to the renewable energy grant program enacted as part of the AARA, including the treatment of recaptured amounts in a partnership context.
3. Guidance under section 168 regarding the treatment of property depreciated under the modified accelerated cost recovery system.

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<sup>1</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

4. Additional guidance on the election out of bonus depreciation under section 168(k)(4), including clarification of the maximum increase amounts and application of the election out provision for fiscal year taxpayers.
5. Proposed regulations under section 263(a) regarding the treatment of capitalized transaction costs, such as those arising in stock acquisitions and tax-free reorganizations.
6. Final regulations under section 263(a) regarding the treatment of expenditures with respect to tangible property.

### **CIVIL AND CRIMINAL TAX PENALTIES**

Charles Rettig, Civil and Criminal Tax Penalties Committee, (310)281-3243, [rettig@taxlitigator.com](mailto:rettig@taxlitigator.com)

1. Review and update of the IRS Voluntary Disclosure Practice Policy Set Forth in IRM 9.5.11.9 (09-09-2004) to better encourage voluntary disclosures by taxpayers who may not have actual criminal exposure but are concerned about potential application of civil penalties that may be imposed by voluntarily disclosing prior non-compliance.
2. Guidance providing increased discretion for field examiners and managers with respect to the impact of penalties on taxpayers in the current recessionary economy, as contemplated by the Commissioner's April 1, 2009 testimony before the House Small Business Committee.
3. Guidance and clarification of worker status and employment tax priorities with meaningful examples setting forth potential liabilities for taxes and penalties. Pyramiding of employment tax liabilities often occurs in a recessionary economy making it difficult for both the IRS and the employer to achieve any realistic resolution in a timely manner.
4. Guidance creating an informal voluntary disclosure program emphasizing employment tax and worker classification issues. The employment tax / worker classification voluntary disclosure program could provide for graduated Worker Classification Settlement Program (CSP) treatment for employers who voluntarily contact the IRS before:
  - The IRS has initiated a civil examination or criminal investigation of the employer, or has notified the employer that it intends to commence such an examination or investigation;
  - The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific employer's noncompliance; or
  - The IRS has initiated a civil examination or criminal investigation that is directly related to the specific liability of the employer.
5. Guidance or other publication describing the types of situations or fact patterns in which the section 6707A penalty has been applied, including examples of situations

where the penalty has been imposed, has been considered and not imposed, and has been imposed and rescinded.

## **CORPORATE TAX**

Rose Williams, Corporate Tax Committee, (212)773-7487, [rose.williams@ey.com](mailto:rose.williams@ey.com)

1. Additional guidance on applicability of Kimbell-Diamond doctrine to a non-QSP followed by liquidation of the acquired corporation.
2. Guidance under section 355 concerning the effect of post-distribution recapitalizations to eliminate special voting rights of distributed stock.
3. Guidance under section 355 concerning momentary inclusion of a corporation in an affiliated group to avoid application of the hot stock rule of section 355(a)(3)(B).
4. Guidance under section 368(a)(1)(F) concerning “born-to-die” corporations and the continuing validity of Rev. Rul. 69-516 (declared obsolete in T.D. 9182, 2005-1 C.B. 713, 714).

## **EMPLOYEE BENEFITS**

Kurt Lawson, Employee Benefits Committee, (202)637-5660, [kllawson@hhlaw.com](mailto:kllawson@hhlaw.com)

1. Guidance explaining how section 401(k) plans handle back pay awards. The hours-of-service definition and the section 415 regulations seem to indicate that back pay should be tracked for all purposes back to the period to which it applies, not the period in which it was paid. *See, e.g.*, Regulation section 1.415(c)-2(g). For plans other than section 401(k) plans, that can usually be done. But for section 401(k) plans, there is the question (for individuals no longer employed) whether back pay can be used at all to make elective contributions, *see* Regulation section 1.401(k)-1(e)(8), and there may be a substantial administrative burden if the section 401(k) discrimination tests must be redone for prior years. Also, if the period to which the pay relates is more than a year in the past, it is not clear how the 12-month contribution deadline in Regulation section 1.401(k)-2(a)(4) is satisfied.
2. Updated model section 402(f) notice. This has been on the priority guidance plan in the past and is needed because of the many changes to the distribution rules since the last model notice was issued in 2002.
3. Guidance on determining synthetic equity under section 409(p). Regulation section 1.409(p)-1(f)(4)(iii)(A) provides that a person who is entitled to synthetic equity that is not share-based "is treated as owning on any date a number of shares of stock in the S corporation equal to the present value (on that date) of the synthetic equity . . . divided by the fair market value of a share of the S corporation's stock as of that date." The regulations provide no guidance on determining present value for this purpose, other than a statement in the preamble that "any assumptions used for such purposes must be reasonable." What assumptions to use and even when to make the

determination are particularly unclear in the case of synthetic equity that is based on annual profits-based bonuses that are deferred compensation.

4. Proposed regulations under section 457(f). Notice 2007-62, 2007-32 I.R.B. 331, announced that the IRS expected to issue prospective guidance applying the same definition of substantial risk of forfeiture under section 457(f) as under section 409A, and defining "bona fide severance pay plan" under section 457(f) in substantially the same way as severance pay plan is defined in the regulations under section 409A. It would be useful if that guidance could be issued, in the form of proposed regulations so that the scope of the proposal can be fully understood and comments submitted, and with an effective date no earlier than when final regulations are issued.
5. Section 436 model amendments. In the preamble to the 436 regulations, the Treasury Department and the IRS indicated that they were contemplating the issuance of model section 436 amendments. Issuance of such model amendments before the date they need to be adopted to comply with PPA would be helpful to plan sponsors. If the government has decided this is not a priority that can be accommodated by the end of the year, it would be helpful to know that as well.
6. Additional guidance under section 457A. There are still many issues on which guidance would be useful under section 457A, including (i) the treatment of arrangements where multiple employers might be viewed as "plan sponsors" of a single arrangement and the impact of both nonqualified and domestic corporations sponsoring a single arrangement, e.g., due to co-employment arrangements, (ii) the impact of a nonqualified entity's guarantee of a domestic corporation's nonqualified deferred compensation, and (iii) whether there will be any relief for severance arrangements that are considered nonqualified deferred compensation because of the elimination of "condition related to the purpose of the compensation" from the definition of substantial risk of forfeiture for section 457A purposes.

## **EXEMPT ORGANIZATIONS**

Michael Clark, Exempt Organizations Committee, (312)853-2173, [mclark@sidley.com](mailto:mclark@sidley.com)

1. Guidance regarding section 4966, including guidance as to the definition of a "donor advised fund" under section 4966(d)(2)(A), the exceptions to donor advised fund status under section 4966(d)(2)(B) and (C), the scope of "taxable distributions" under section 4966(c), and how the private foundation expenditure responsibility rules apply to donor advised fund distributions.
2. Guidance regarding the requirements for qualification as a "functionally integrated type III supporting organization" under section 4943(f)(5) for purposes of the qualifying distribution rules under section 4942 and the excess business holding rules of section 4943.

3. Guidance regarding section 4958(c)(2) to (3) and (f) and its application to supporting organizations and donor advised funds, including defining “substantial contributors” and “disqualified persons” with respect to supporting organizations which support the charitable and educational programs of section 501(c)(4), (5), or (6) organizations.
4. Guidance regarding section 509(f), including guidance as to the requirements which charitable trusts must meet in order to satisfy the “responsiveness” requirement of Regulation section 1.509(a)-4(i)(2).
5. Guidance regarding the application of section 4967, including defining the “incidental benefits” which provide the occasion for and measure of the tax.
6. Guidance on how a split-interest trust can protect the identity of its non-charitable beneficiary (as permitted by law and the instructions to Schedule A of form 5227) where the name of the non-charitable beneficiary also appears in the name of the trust.
7. After taking into account public comments, finalize the temporary and proposed regulations under sections 509(a)(1), 170(b)(1)(A)(vi), and 509(a)(2) to simplify, clarify, and achieve greater consistency in application of the alternative public support tests for organizations seeking classification as public charities, consistent with the revised Form 990.
8. Guidance regarding acceptable methods for determining whether an organization is conducting political activities (including both candidate campaign intervention and improper private benefit to partisan interests) as its primary activity (consistent with section 527 exemption), or as a less-than-primary activity (consistent with non-charitable section 501(c) exemption).
9. Additional guidance supplementing Revenue Ruling 2007-41 to address (a) standards for oral speech by charitable representatives, (b) voter guide methodology, (c) the relationship between the federal tax rules on issue advocacy and the Federal Election Commission rules for electioneering communications, (d) standards for links between charitable websites and those containing political material, and (e) how charities (including those with a single issue focus) may present policy issues to candidates and publicize their responses, beyond candidate questionnaires and debate sponsorship.
10. Updated guidance on exemption procedures, including:
  - The revenue procedures regarding foundation status determinations (Rev. Proc. 76-34), including simplified procedures for recognizing a change in status from

a private foundation or a supporting organization to a publicly supported charity;

- Group exemptions (Rev. Proc. 80-27), including a new process by which grantors can recognize whether a member of a group exemption qualifies as a non-private foundation, other than as a section 509(a)(3) supporting organization.
- Obtaining a revised determination letter, without the need for filing a new Form 1023 or 1024, where there is a mere change in the state of incorporation (Rev. Rul. 67-390, Case 4).

11. Guidance regarding the computation and reporting of “qualified donee income” from “qualified intellectual property” contributions described in section 170(m).
12. Guidance regarding when a member of a tax-exempt organization’s board of directors can be considered independent for purposes of the rebuttable presumption of Regulation section 53.4958-6 notwithstanding a financial relationship between the organization and the director or the director’s employer, under a *de minimis* standard or otherwise.
13. Guidance regarding the definition and scope of program-related investments of private foundations, taking into account current-day investment vehicles and the current practice of program-related investing.
14. Provide safe-harbor guidance for private foundation program related investments into low profit limited liability companies (“L3Cs”) in states that have adopted the L3C form.
15. Guidance regarding the application of section 501(m) and commercial-type insurance. Following the Supreme Court’s decision in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355 (2002), the Service’s withdrawal of its HMO audit guidelines in this area, and the expiration of the 18-month directive suspending the application of section 501(m) to HMOs, there is no guidance concerning the Service’s interpretation of section 501(m).
16. Guidance that clarifies that borrowing in order to make charitable grants or to support charitable programs does not normally constitute acquisition indebtedness within the meaning of section 514(c) and guidance that provides examples that clarify the application of the “but for” and “reasonably foreseeable” tests under section 514(c)(1)(C) to situations in which a charity borrows to fund charitable programs or grants.

## **FINANCIAL TRANSACTIONS**

Mark Price, Financial Transactions Committee, (202)533-4364, [mhprice@kpmg.com](mailto:mhprice@kpmg.com)

1. Final regulations under section 1058 dealing with securities lending.
2. Guidance with respect to the treatment of market discount bonds that are acquired at steep discount reflective of poor credit quality.
3. Guidance on the characterization of credit default swaps.
4. Final regulations under section 446 on notional principal contracts relating to the inclusion in income or deduction of a contingent nonperiodic payment and guidance relating to the character of payments made pursuant to a notional principal contract.

## **FOREIGN ACTIVITIES OF U.S. TAXPAYERS**

Joseph Calianno, Foreign Activities of U.S. Taxpayers Committee, (202)521-1505, [joe.calianno@gt.com](mailto:joe.calianno@gt.com)

1. Final regulations related to look-through treatment for 10/50 company dividends and to reduction of foreign tax credit baskets.
2. Final regulations under section 7874 regarding the treatment of expatriated entities and their foreign parents.
3. Guidance on treaties, including guidance related to (i) the treatment of disregarded entities in the context of qualifying for the reduced withholding rates under treaties, (ii) the impact of certain reorganizations and restructurings on qualifying for treaty benefits, and (iii) limitation on benefits qualification including when a taxpayer may obtain a ruling under the discretionary provisions of treaties.
4. Guidance on the application of section 267(a)(3)(B), including providing guidance on transactions that may be exempted pursuant to section 267(a)(3)(B)(ii).
5. Guidance on whether Notice 2004-20 (the section 338(g)/foreign tax credit Midco notice) applies when there are internal restructurings within a U.S. multinational group following a section 338(g) election.
6. Final regulations under section 959 on previously taxed earnings and profits.
7. Additional guidance under section 954(d) on contract manufacturing relating to special industry issues.
8. Additional guidance under section 954 regarding previously issued guidance, *see, e.g.*, Notice 2007-13 regarding substantial assistance.
9. Guidance under section 367(d). Temporary regulations under section 367(d) were published on May 16, 1986.

10. Guidance under Regulation section 301.7701-3(d) relating to the "relevancy rules", including the deemed federal tax consequences when a U.S. person acquires an entity that previously was not relevant when certain elections are made or no election is made.
11. Guidance concerning the treatment of currency gain or loss. Proposed regulations under section 987 were published on September 7, 2006.
12. Guidance under sections 1296, 1297, and 1298 relating to tiered investments.
13. Guidance on international restructurings. Temporary regulations under section 367(b) were published on May 27, 2008. Temporary regulations under section 956 were published on June 28, 2008. Proposed regulations under section 367(a)(5) were published on August 20, 2008.
14. Guidance under sections 901(k) and (l). Notice 2005-90 soliciting comments under the credit disallowance rule under section 901(l), and related issues under section 901(k), was published on December 19, 2005.
15. Guidance under section 475 tax/book conformity election relating to International Financial Reporting Standards (IFRS).
16. Final regulations on source of compensation. Proposed regulations on the event basis for sourcing certain services compensation were published on October 17, 2007.
17. Final regulations or other guidance related to shipping and aircraft transportation. Temporary regulations under section 1.883-3 were published on June 25, 2007.
18. Guidance under the Tax Increase Prevention Reconciliation Act (TIPRA) for 2008 housing cost amount under section 911.
19. Guidance on cross-border information reporting and filing issues, including under sections 6048 and 6677 regarding foreign trusts.
20. Guidance on mark-to-market expatriation provision under the Heroes Earnings Assistance and Relief Tax Act of 2008.

## **INVESTMENT MANAGEMENT**

Joseph Riley, Investment Management Committee, (212)728-8715, [jriley@wilkie.com](mailto:jriley@wilkie.com)

1. Guidance under section 457A(d)(B) as to compensation based upon gain from an investment asset, including clarification as to "directly acquired" with respect master-feeder and similar fund structures and definition of "active management".
2. Guidance under section 368 as to continuity of business enterprise requirements for mergers of regulated investment companies.

3. Guidance under section 851 regarding commodity-index structured notes held by regulated investment companies.
4. Guidance under section 337(d) related to real estate investment trusts and regulated investment companies.
6. Guidance regarding the application of section 382(1)(1) to regulated investment companies.
7. Guidance for regulated investment companies and real estate investment trusts concerning the application of section 1(h) to capital gain dividends.
8. Guidance relating to the accrual of interest on distressed debt.
9. Guidance providing relief for common minor errors that may affect qualification as a regulated investment company or real estate investment trust.
10. Guidance on inbound investment, financing, broker, and dealer activities, including further guidance on certain investment income of foreign governments.

#### **PARTNERSHIPS & LLCs**

R. Brent Clifton, Partnerships and LLCs Committee, (214)740-8555, [bclifton@lockelord.com](mailto:bclifton@lockelord.com)

1. Final regulations under section 108(e)(8).
2. Final regulations under section 706(d).
3. Guidance with respect to section 108(i) relating to deferral of income from certain cancellations of indebtedness.
4. Guidance regarding the treatment of cancellation of indebtedness income as “qualifying income” for purposes of section 7704.
5. Guidance confirming that subpart F inclusions and QEF inclusions are qualifying income for purposes of section 7704 regardless of whether cash equal to such inclusions are distributed.
6. Guidance under section 751(b). Consideration should be given to splitting the guidance project into two parts, the first that updates the regulations to reflect the hypothetical sale approach to measuring shares of hot assets, and the second that adopts an exchange model that minimizes the recognition of capital gain in hot asset exchanges to the maximum extent possible.
7. Guidance on how to treat multiple layers of forward and reverse section 704(c) gain or loss.

8. Guidance under section 1446 relating to how a partnership is relieved of its effectively connected income withholding obligations if the only partnership asset is foreclosed upon with no net cash remaining to the partnership. *See e.g.*, Regulation section 1.1445-2(d)(3).
9. Clarification on the scope of Rev. Rul. 2008-39 regarding the treatment of management fees in tiered partnerships (particularly as it applies to master-feeder structures).
10. Guidance under Regulation section 1.704-2(f)(6) concerning the minimum gain chargeback requirement which requires gains from disposition of property subject to partnership nonrecourse liabilities to be included in the chargeback before other items of income, and whether it might be appropriate to specify similar treatment for cancellation of indebtedness income related to partnership nonrecourse liabilities.

### **REAL ESTATE**

James Sowell, Real Estate Committee, (202)533-5710, [jsowell@kpmg.com](mailto:jsowell@kpmg.com)

1. Revisions to Regulation section 1.514(c)-2, with particular focus on implications of capital commitment reductions and capital call defaults.
2. Guidance under section 108(c), with particular focus on definition of “secured by real property.”
3. Guidance regarding the treatment of an interest in a money market fund as a “cash item” under section 856(c)(4)(A).
4. Guidance regarding the accrual by a real estate investment trust of earnings and profits attributable to income deferred under section 108(i).
5. Guidance regarding the treatment of cancellation of indebtedness income as “unrelated business taxable income” under section 512.

### **SALES, EXCHANGES & BASIS**

Brad Borden, Sales Exchanges and Basis Committee, (785)670-1857, [brad.borden@washburn.edu](mailto:brad.borden@washburn.edu)

1. Guidance regarding the tax treatment of exchangers who deposit money with a qualified intermediary that fails, including those intermediaries in which the owners or employees engage in fraudulent or criminal activity related to exchange funds.
2. Guidance regarding the tax consequences to co-owners of bankrupt tenancies-in-common who modify the co-ownership agreement to allow disproportionate capital contributions or to grant additional authority and alter the compensation paid to the property manager.
3. Guidance regarding the character of accrued original issue discount and the deduction for bad debt.

4. Guidance regarding the definition of section 1031 like-kind intangible property.
5. Guidance regarding related party exchanges for equipment rental companies.

#### **TAX ACCOUNTING**

Carol Conjura, Tax Accounting Committee, (202)533-3040, [cconjura@kpmg.com](mailto:cconjura@kpmg.com)

1. Guidance under section 174 regarding changes in method of accounting from an impermissible method.
2. Guidance under section 174 regarding whether certain costs associated with producing inventory may be characterized as research and experimental expenses.
3. Proposed regulations under section 263(a) regarding the treatment of capitalized transaction costs.
4. Final regulations under section 263(a) regarding the treatment of expenditures with respect to tangible property.
5. Guidance under section 263(a) regarding the deduction and capitalization of costs for maintenance of network assets.
6. Guidance regarding supporting documentation required under section 1.263(a)-5(f) to allocate success-based fees between activities that facilitate a transaction and activities that do not facilitate a transaction.
7. Guidance regarding the treatment of post-production costs, including sales based royalties, under section 263A.
8. Guidance under section 263A regarding whether “negative” additional section 263A costs are taken into account under section 1.263A-1(d)(4).
9. Guidance under section 263A regarding the criteria for using the simplified resale method, for treating a facility as an on-site storage facility, and the extent to which services performed by a retailer on customer-owned property cause the taxpayer to be a producer.
10. Final regulations under sections 381(c)(4) and (5) regarding changes in method of accounting.
11. Revenue Procedure under section 446 modifying the procedures for obtaining consent to change a method of accounting in response to Notice 2007-88.
12. Guidance regarding the nonaccrual experience method under section 448.
13. Guidance regarding the application of section 1.451-4 to customer loyalty programs.

14. Guidance under section 451 regarding the timing of income from the sale and use of gift cards.
15. Guidance under section 453A regarding the application of the interest charge rules to contingent payment sales.
16. Final regulations under section 460 on contracts that qualify for the rules for home construction contracts.
17. Guidance under section 468B regarding the tax treatment of a single-claimant qualified settlement fund.
18. Guidance under section 1.472-8 regarding the inventory price index computation method.

### **TAX EXEMPT FINANCING**

Jeremy Spector, Tax Exempt Financing Committee, (212)692-8283, [jaspector@mintz.com](mailto:jaspector@mintz.com)

1. Guidance on the definition of “issue price” for tax-exempt bonds (including Build America Bonds).
2. Guidance on the allocation of the national recovery zone economic development bond (RZEDB) and national recovery zone facility bond (RZFB) limitations.
3. Guidance on direct pay Build America Bonds to address:
  - Is the requirement that 100% of available project proceeds (minus the amount deposited into a reasonably required reserve fund) be spent on capital expenditures met if some of the proceeds are spent for one or more of the *de minimis* items detailed in Regulation section 1.148-6(d)(3)(ii)(A)(1)? In general, do the same allocation and accounting rules apply to direct pay Build America Bonds as to tax-exempt bonds?
  - Is the capital expenditure requirement satisfied if proceeds are spent to prepay for gas or electricity as provided in section 148(b)(4) and Regulation section 1.148-1(e)(2)(iii)?
  - How does the prohibition on more than a *de minimis* amount of premium apply?
  - May issue price (for purposes of the premium rule) be determined in accordance with Regulation section 1.148-1(b)?
  - Should an issue of direct pay Build American Bonds be treated for all tax purposes as a separate issue from tax-exempt bonds issued by the same issuer, payable from the same source, sold within 15 days, and pursuant to a common plan of financing?
  - Will rules similar to those in Regulation section 1.141-12 apply to allow an issuer the ability to correct or mitigate inadvertent errors or deliberate actions because of changed circumstances? If the change in use results in a bond no

longer being a “qualified bond” under section 54AA(g), do the holders of the bonds start receiving tax credits under section 54AA generally? Similarly, where an by calling bonds with all monies that cannot be used to pay capital expenditures but that are otherwise required to be used for capital expenditures under section 54AA?

4. Guidance on tax credit bonds, particularly Qualified School Construction Bonds (“QSCBs”) to address:
  - Is the requirement that 100% of available project proceeds (minus the amount deposited into a reasonably required reserve fund) be spent on capital expenditures met if some of the proceeds are spent for one or more of the *de minimis* items detailed in Regulation section 1.148-6(d)(3)(ii)(A)(1)? In general, do the same allocation and accounting rules apply to QSCBs as to tax-exempt bonds?
  - What is the relationship between the special rules for investments during the expenditure period and for reserve funds under section 54A(d)(4)(B) and (C) and the general yield restriction and rebate provisions under section 148? For example, do the six-month, eighteen-month, and two-year spending exceptions to the rebate requirement apply to QSCBs?
  - May issue price (for purposes of compliance with the arbitrage yield restriction and rebate requirements) be determined in accordance with Regulation section 1.148-1(b)?
  - Should an issue of QSCBs be treated for all tax purposes as a separate issue from tax-exempt bonds issued by the same issuer, payable from the same source, sold within 15 days, and pursuant to a common plan of financing?
  - Will rules similar to those in Regulation section 1.141-12 apply to allow an issuer the ability to correct or mitigate inadvertent errors or deliberate actions because of changed circumstances?
5. Guidance on the application of the section 265(b)(3)(G) aggregation provisions to section 501(c)(3) organizations.
6. Guidance on record retention requirements for tax exempt bonds and tax credit bonds, including safe harbor guidance regarding any records required to support the periodic returns required to be filed in the case of direct pay Build America Bonds.

## **TRANSFER PRICING**

John Warner, Transfer Pricing Committee, (202)452-7948, [john.warner@bipc.com](mailto:john.warner@bipc.com)

1. Finalization of the temporary cost sharing buy-in regulations.
2. Finalization of the temporary intercompany services regulations.
3. Guidance under section 367(d).
4. Re-propose regulations on global dealing operations.

## **U.S. ACTIVITIES OF FOREIGNERS AND TAX TREATIES**

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1. Guidance under the individual expatriation exit tax rules of section 877A with respect to the application of the rules to deferred compensation and trust arrangements.
2. Guidance on how the source and character of cancellation of indebtedness income is determined for withholding tax purposes.
3. Guidance on the definition of "in and doing business in" for the requirement of nonresident aliens to file FBAR reports.
4. Guidance on the applicability of section 894(c) (denial of treaty benefits for payments through hybrid entities) to items of income other than FDAP income.
5. Guidance on the withholding of tax by a life insurance company to purchasers of life insurance settlement contracts.
6. Guidance under sections 1441 and 1442 relating to certification, reporting and disclosures especially in the context of the qualified intermediary system.
7. Voluntary disclosure guidance with respect to dual citizen taxpayers who have not filed U.S. tax returns but who have filed foreign local resident tax returns.