

VIRTUAL COFFEE TALK

Hot Tax Topics in M&A

Adam Benson and Kevin M. Jacobs, Alvarez & Marsal Taxand
Angela Rohman Russo, Winston & Strawn LLP
Kevin Deyoung, Wolters Kluwer

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Agenda

1 **Current Tax Reform Proposals**

2 **Current M&A Trends**

3 **Current M&A Challenges**

Tax Reform ... Where Are We Now?

- Friday, November 19, 2021 — House passed the Build Back Better Act reconciliation bill
- Senate's key players
 - Senate parliamentarian
 - Senators Sinema and Manchin
 - Senate Finance Committee Chairman Wyden
 - Senate Budget Committee Chairman Sanders
- Anticipated timing: “year-end”



Current Tax Reform Proposals Impacting Sellers

- Tax rate changes — Individuals
 - Ordinary income
 - Capital gains tax
 - Surcharge on modified adjusted gross income (AGI)
 - Net Investment Income Tax (NIIT) changes



Current Tax Reform Proposals Impacting Sellers *(cont'd)*

- Tax rate changes — Corporations
 - Book Alternative Minimum Tax (AMT) for corporations
- Qualified Small Business Stock (QSBS) changes
- Section 461(l) changes
- International tax proposals
- State and Local Tax (SALT) deduction limitation



POLLING QUESTION

Do you believe Congress will pass some form of the Build Back Better Act this year?

☐ Yes

☐ No

Current Tax Reform Proposals Impacting Buyers



- Limitations on interest expense deductions
 - Changes to the section 163(j) limitation for partnerships
 - New additional limitation on interest expense
- Change in certain common control rules
- International tax provisions

Other Tax Reform Proposals To Be Aware Of



- Changes to divisive reorganizations
- Worthlessness and “Granite Trust” planning
- Research and experimental costs
- Executive compensation
- Cryptocurrency

POLLING QUESTION

Do you think M&A deal activity will increase, continue at its current pace, or decrease in 2022?

- ☐ **Increase**
- ☐ **Continue at its current pace**
- ☐ **Decrease**

Current M&A Trends

- Structuring of consideration
 - Fixed consideration versus Earnouts
- Protecting the deal
 - Indemnities versus Representations and warranties insurance
 - Tax issues insurance



POLLING QUESTION

Would you like to schedule a call with A&M or Winston & Strawn to discuss a potential transaction that your company is contemplating or implications of tax reform in general?

- ☐ Yes, with A&M and Winston & Strawn
- ☐ Yes, with A&M
- ☐ Yes, with Winston & Strawn
- ☐ I am not interested at this time
- ☐ Not applicable, I am a practitioner

Current M&A Challenges



- Valuation and Monetization of attributes
- Deferred or unbilled amounts
 - Deferred revenue and unbilled revenue
 - Deferred payroll taxes
 - Taxes as a liability

Current M&A Challenges — Special Purpose Acquisition Companies (SPACs)



- SEC guidance
- Transaction costs and de-SPAC transactions
 - Success based fees versus fixed fees
 - What amounts “facilitate the transaction”
 - Who are the services provided for

CCH® AnswerConnect®



POLLING QUESTION

Would you like a more in-depth demo or further details on the resources and tools available in CCH® AnswerConnect?

☐ Yes

☐ No

The background of the slide is a blue-tinted photograph of a workspace. In the top left, a computer mouse is visible. In the top center, a laptop keyboard and trackpad are partially shown. In the bottom right, a cup of coffee sits on a saucer. A solid green horizontal band spans the middle of the image, containing the main text.

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Thank you for attending

Virtual Coffee Talk — Hot Tax Topics in M&A

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Adam Benson

Adam Benson is a Managing Director with Alvarez & Marsal Taxand in New York NY and the U.S. leader of Alvarez & Marsal's Global Transaction Tax practice.

Mr. Benson brings more than 15 years of tax consulting experience advising on a range of domestic and international taxation issues. His professional focus has been on domestic and cross-border mergers and acquisitions, tax due diligence, cash tax modeling, complex carve-out transactions, capital structure planning, reorganizations, group structure changes, entity rationalization, global tax structuring, cash and effective tax rate optimization, and integration of existing and acquired businesses. Mr. Benson has worked with clients across various industries including healthcare, software and technology, energy, consulting, manufacturing and infrastructure.

In addition, Mr. Benson has significant experience with tax planning for start-up and rapidly growing businesses including IP planning, global expansion and cross-border tax issues, tax accounting methods and periods, and tax optimization of global supply chains. He has also worked extensively with tax attribute planning in the context of M&A transactions and bankruptcy/restructuring situations.

Mr. Benson's clients have included a variety of public and private corporations, as well as domestic and international private equity firms. Notable clients include a highly acquisitive Fortune Global 500 organization, a large European-based private equity firm investing in global healthcare, technology and infrastructure assets, and a large domestic private equity fund investing in consumer goods and business services transactions.

Prior to joining A&M, Mr. Benson served in the Mergers & Acquisitions Tax practice at PwC.

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abenson@alvarezandmarsal.com
+1 425.761.9519

Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sectors.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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kjacobs@alvarezandmarsal.com
+1.202.729.2084

Angela Rohman Russo

Angela Rohman Russo is a Partner with Winston & Strawn LLP in Chicago, IL. She has extensive experience in transactional tax matters, specifically in structuring and negotiating complex domestic and cross-border mergers, acquisitions, and divestitures of private and public companies in a wide range of industries, including manufacturing, retail, food and beverage, professional services, technology, and health care. She also advises on the tax aspects of debt and equity financings, corporate restructurings and recapitalizations, and various capital market transactions.

Additionally, Angela regularly counsels investment funds relating to tax matters on the structuring and formation of funds. She has also represented clients in regard to the tax components on the formation and operation of partnerships, limited liability companies, and joint ventures.


In addition to U.S.-based representations, Angela has worked extensively in Hong Kong, focusing on the tax aspects of investment fund formation, representing both sponsors and sovereigns, and growing an Asia funds practice. Throughout her years of practice, Angela has regularly advised pro bono clients on tax matters.



arusso@winston.com
+1.312.558.5839



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