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Back to Basics: IRS Letter Cautions Against Inadvertent ERISA Benefit Offerings

Recent guidance issued by the Internal Revenue Service (IRS) highlights the importance of employer diligence in the operation of tax-qualified retirement plans. In light of this guidance, employers sponsoring qualified plans may wish to review the benefits offered to their employees to avoid disqualification or compliance obstacles.

In Private Letter Ruling 201722014 (the Letter), the IRS explained that a particular defined benefit plan for state government employees could face disqualification based on a proposed separation pay arrangement. Legislation proposed in the state would have provided employees, in lieu of exercising certain reduction-in-force rights, the option to elect either (1) a one-time lump sum severance benefit, or (2) a subsidized early retirement benefit under the state’s defined benefit pension plan.

While generally, there are no formal requirements or filings necessary to establish a plan under the Employee Retirement Income Security Act (ERISA), when an employer provides employee benefits, the employer generally must comply with both ERISA and the Internal Revenue Code (the Code) to avoid potential liabilities or unfavorable tax treatment. Thus, without proper diligence, employers may unintentionally subject themselves to the myriad responsibilities and obligations for maintaining qualified plans under both ERISA and the Code.

In the Letter, the IRS concluded that by offering the employees an election, the plan would include a cash or deferred arrangement (CODA), which is something that, under the Internal Revenue Code, may not be offered under a defined benefit pension plan. Broadly, because the employees would have the option to elect either the lump sum payment (cash) or a subsidized early retirement benefit (deferral of compensation), the proposed offer would constitute a CODA, and offering a CODA would disqualify the defined benefit plan.

Although this IRS guidance comes in the form of a Private Letter Ruling, which binds only the IRS and the requesting taxpayer, it allows plan sponsors to gain a better understanding of the IRS’s views regarding the inadvertent creation of CODAs.

IRS Addresses Insurance Characterization in the Context of an Employer-Provided, Self-Funded Health Plan

A recent Internal Revenue Service (IRS) Chief Counsel Advice (CCA) released by the employee benefits division is the latest statement by the IRS on the issue of “what is insurance.” In CCA 201719025, released May 12, 2017, the IRS determined that an arrangement involving a self-funded accident or health plan did not qualify as insurance for US federal income tax purposes, where the average amount received by an employee for participating in a health-related activity generally exceeded the after-tax contributions made by the employee to the plan. As a result, benefits received under the plan did not qualify for the exclusion for accident or health insurance benefits under section 104(a)(3) and were included in the employee’s income.

In considering whether the benefits paid under the employer-provided, self-funded plan should be included in the income of the recipient employee, the IRS explained that although the participating employees received a payment for engaging in certain health-related activities, the activities did not involve a fortuitous risk of economic loss (unlike, for example, a doctor’s visit when ill) and, accordingly, (i) did not involve the shifting of an insurance risk, and (ii) could not be characterized as insurance. As a result, the payments were not amounts received by the employees as “amounts received through accident and health insurance (or through an arrangement having the effect of accident or health insurance)” for purposes of section 104(a)(3) and, therefore, could not be excluded from income under that provision.

According to the IRS, the plans at issue in the CCA were each an attempt to convert pre-tax contributions or employer-provided funds into tax-free benefits and to circumvent the requirements to pay FICA and FUTA. This CCA reflects the IRS’s continuing interest in whether certain arrangements qualify as insurance.
IRS Reissues Proposed Regulations Implementing New Partnership Audit Regime

By David Roby, Wes Sheumaker, Karl Zeswitz and Eric Santos

On June 13, 2017, the Internal Revenue Service (IRS) reissued a voluminous package of regulations (the 2017 Proposed Regulations) regarding the new partnership audit regime created under the Bipartisan Budget Act of 2015. The new partnership audit regime significantly alters the administrative procedures that apply to US partnerships and other entities (such as LLCs) classified as partnerships for US tax purposes. Among other things, under the new partnership audit regime, a partnership, rather than its partners, may be liable for US federal taxes, interest and penalties resulting from adjustments to partnership-related tax items. For additional information on the new partnership audit regime, see this Eversheds Sutherland legal alert. The new partnership audit regime generally applies to partnership tax years beginning after December 31, 2017.

As a general matter, the 2017 Proposed Regulations (which are nearly identical to regulations previously proposed in January 2017, but withdrawn after the inauguration of President Trump) clarify certain aspects of the new partnership audit regime but fail to address many taxpayers’ concerns regarding the new regime.

Among other things, the 2017 Proposed Regulations clarify that the IRS intends to apply the new partnership audit regime broadly to “all items and information required to be shown, or reflected, on a return of the partnership … and the forms and instructions prescribed by the Internal Revenue Service … and any information in the partnership’s books and records for the taxable year.”

Marketplace Providers Are Statutorily Required to Collect Sales Tax in Minnesota and Washington

By Jeff Friedman and Stephanie Do

A new landmark sales tax statute has been adopted in Minnesota, which expands sales tax collection requirements to those retailers that sell their goods on certain “marketplaces.” Generally, only a retailer that is physically present in a state is required to collect and remit the state’s sales tax. The US Constitution’s dormant Commerce Clause requires that a person or transaction have “substantial nexus” with a state before the state may impose its sales tax on that person or transaction. Complete Auto Transit v. Brady, 430 U.S. 274 (1977).

In 1992, the US Supreme Court clarified in Quill Corp. vs. North Dakota, 504 U.S. 298 (1992), that “substantial nexus” only exists when there is a non-trivial physical presence for sales tax purposes.

Given the changes in technology and consumer sophistication since Quill was decided, states have been enacting broader sales tax nexus laws in an effort to increase revenues, especially from ecommerce. There also have been various attempts to expand the definition of substantial nexus or what constitutes a physical presence.
In the most recent attempt, Minnesota statutorily expanded its sales tax collection obligation to “marketplace providers” that provide their platforms to retailers to sell their goods. On May 30, 2017, H.F. 1 was passed, which effectively creates a sales tax collection requirement for any retailer that makes sales through a “marketplace provider,” even if the retailer is not actually physically present in Minnesota. The legislation also requires a “marketplace provider” to collect and remit sales tax for the retailer’s sales it facilitates. A “marketplace provider” is defined as “any person who facilitates a retail sale by a retailer” by: (1) listing or advertising sales by the retailer; and (2) collecting payments from the retailer’s customers and transmitting those payments to the retailer.

On July 13, 2017, the US Tax Court held that a non-US partner’s gain on the disposition of its interest in a partnership that conducted a US trade or business (USTB) was generally not subject to US tax. Grecian Magnesite, Industrial & Shipping Co., SA v. Commissioner, 149 T.C. 3 (2017). The Tax Court rejected the Internal Revenue Service’s (IRS) 26-year position, articulated in Rev. Rul. 91-32, 1991-1 C.B. 107, that a non-US partner’s gain on the disposition of its interest in a partnership that conducts a USTB is effectively connected income with such USTB to the extent a sale of the underlying assets would give rise to effectively connected income. This decision has significant implications for non-US partners in US entities classified as partnerships for US tax purposes.

In Grecian Magnesite, the taxpayer had received a distribution in full redemption of its interest in a US company treated as a partnership. The distribution resulted in a gain, a portion of which was attributable to the company’s US real estate. The taxpayer and the IRS agreed that, although the gain arose as a result of a redemption, the gain was treated as gain from a sale of the taxpayer’s interest in the company and therefore characterized by section 741 as “gain or loss from the sale or exchange of a capital asset” (subject to section 751). The parties also agreed that the gain attributable to the company’s US real property was subject to US tax. At issue was whether the remaining gain was subject to US tax. The IRS also asserted certain penalties, which are discussed in more detail in an Eversheds Sutherland legal alert.

The IRS relied on Rev. Rul. 91-32, which held that a non-US partner’s gain on the disposition of its interest in a US partnership should be analyzed on an “aggregate” basis and, to the extent the assets of the partnership would give rise to effectively connected income if sold by the partnership, the non-US partner’s pro-rata share of such gain should be treated as effectively connected income. The IRS argued that the ruling was entitled to deference from the Tax Court. The Tax Court found the technical analysis in Rev. Rul. 91-32 to be deficient and, noting that the ruling “lacks the power to persuade,” declined to defer to the ruling.

The Tax Court held that the unambiguous language of section 741 adopts the “entity” approach with respect to the disposition of a partnership interest. Treatment of the partnership as an “aggregate” of its various assets was not appropriate under the statutory language or the legislative history, which indicated that section 741 codified longstanding case law applying an “entity” approach. While the Tax Court noted that certain statutory exceptions apply an “aggregate” approach, it found no basis for an extra-statutory application of the “aggregate” approach in light of the unambiguous language of section 741.

The Tax Court then analyzed whether the gain was subject to US tax. Ordinarily, gain from the disposition of personal property by a non-US person would be foreign-source income. The IRS argued that the gain should be subject to the section 865 “US office” exception, which would result in treatment as US-source income. The Tax Court found that, under the relevant regulations, the “US office” exception did not apply. Accordingly, the Tax Court held that the gain was non-effectively connected, foreign-source income and thus not subject to US tax.

Rev. Rul. 91-32 has long been criticized by practitioners as inconsistent with the unambiguous language of section 741, and its rejection in Grecian Magnesite is significant. The ultimate implications of Grecian Magnesite will depend on whether the case is appealed and, if so, on the result of any appeal. A legislative response is always possible and, indeed, the Obama administration proposed codifying Rev. Rul. 91-32 on a number of occasions. The Trump administration has yet to address this issue. Further details regarding Grecian Magnesite are available in an Eversheds Sutherland legal alert.
Reliance on a Tax Advisor Is Reasonable Cause for Errors on Foreign Corporation’s US Return

In a recent case, the United States Tax Court held that the taxpayer, a foreign corporation, was not liable for penalties related to failure to report US taxable gain or file a US income tax return because it had relied in good faith on advice of a US tax advisor. Grecian Magnesite, Industrial & Shipping Co., SA v. Commissioner, 149 T.C. 3 (2017).

In Grecian Magnesite, the taxpayer had received a distribution in full redemption of its interest in a US company treated as a partnership. The distribution resulted in a gain, a portion of which was attributable to the company’s US real estate. Based on the advice of an experienced certified public accountant (CPA), the taxpayer did not report any of the gain as US taxable income, and did not file a US tax return for one of the years in which it received redemption proceeds. The CPA who advised the taxpayer had been referred by the taxpayer’s US legal counsel, and while experienced, had never advised a non-US client.

The taxpayer and the Internal Revenue Service (IRS) agreed that the CPA’s advice had been partially incorrect and that the portion of the gain attributable to US real estate was taxable in the US. The Tax Court determined that the remainder of the gain was not subject to US tax. More details regarding the Tax Court’s substantive holding, which involved rejection of an IRS Revenue Ruling, are available in an Eversheds Sutherland legal alert.

The IRS asserted the accuracy-related, failure-to-file and failure-to-pay penalties with respect to the failure to report the taxable portion of the gain. The taxpayer argued that the penalties did not apply because of good faith reasonable reliance on the advice of the CPA. The IRS argued that, in order to establish reliance on the advice of the CPA, the taxpayer was required to have (i) conducted an independent investigation into the advisor’s background and experience, and (ii) hired an expert who specialized in international tax law or an attorney with an LL.M. degree.

The Tax Court rejected the IRS’ arguments. The court reasoned that, given the taxpayer’s relative inexperience with US tax laws, it reasonably relied on the recommendation of its legal counsel in hiring the CPA. The court also held that, despite the lack of an LL.M., the CPA had sufficient credentials to justify the taxpayer’s reliance. Accordingly, the taxpayer had demonstrated reasonable cause and was not liable for accuracy-related, failure-to-file or failure-to-pay penalties. The Grecian Magnesite decision is consistent with longstanding case law and rejects the IRS’ attempt to narrow foreign corporations’ ability to rely on advice from a tax advisor to demonstrate reasonable cause for failure to file a US tax return. More details regarding the procedural aspects of the case are available in an Eversheds Sutherland legal alert.

OECD BEPS Project – Multilateral Convention Amending Bilateral Tax Treaties

On June 7, 2017, in what has been described by the Organization for Economic Co-operation and Development (OECD) as a “new turning point in tax treaty history,” 68 countries have signed a multilateral convention which will have the effect of amending more than 1,100 bilateral tax treaties between the signatories.

The convention implements those measures from the OECD base erosion and profit shifting (BEPS) project that require treaty amendments. The purpose of the convention is to stop “treaty shopping” and other uses of treaties regarded by the OECD as abusive. Specific BEPS actions included in the treaty amendments include measures against hybrid mismatches, treaty abuse and a strengthened definition of Permanent Establishment. The convention will prevent BEPS measures enacted by individual jurisdictions from being rendered ineffective by existing tax treaties.

Further details, including the text of the convention and a full list of participating countries, can be found on the OECD website.
On July 7, 2017, the US Department of Treasury (Treasury) identified eight significant regulations, including regulations under sections 385 (treatment of certain debt as equity), 752 (partnership liabilities), 367 (outbound transfers of property) and 987 (currency gains and losses), for review, modification and possible repeal.

These regulations were identified in response to an Executive Order, issued April 21, 2017, by President Trump, directing Treasury to review all “significant tax regulations” issued on or after January 1, 2016, and identify regulations that (i) impose an undue financial burden on US taxpayers; (ii) add undue complexity to the federal tax laws; or (iii) exceed the statutory authority of the US Internal Revenue Service. The Executive Order also instructed Treasury to submit a report by September 17, 2017, recommending specific actions to mitigate the burden imposed by the regulations identified.

In response to the Executive Order, Treasury issued Notice 2017-38, which identified eight significant regulations for review, modification and possible repeal, including:

- Final regulations under section 385 on the treatment of certain interests in corporations as stock or indebtedness.
  - These regulations (i) establish minimum documentation requirements in order for purported debt among certain related parties to be respected as debt for US federal tax purposes; and (ii) treat certain debt issued to related parties in connection with certain transactions, generally distributions, stock sales and asset reorganizations, as equity for US tax purposes.

- Final regulations under section 367 on the treatment of certain transfers of property to foreign corporations.
  - These regulations eliminated the ability of US taxpayers under prior regulations to transfer foreign goodwill and going concern value to a foreign corporation without immediate or future US income tax.

- Final regulations under section 987 on income and currency gain or loss with respect to a section 987 qualified business unit.
  - These regulations provide rules for (i) translating income from branch operations into its owner’s functional currency; (ii) calculating foreign currency gain or loss with respect to the branch’s assets and liabilities; and (iii) recognizing such gain or loss when the branch transfers property to its owner.

- Temporary regulations under section 752 on liabilities recognized as recourse partnership liabilities.
  - These regulations generally provide rules (i) for how liabilities are allocated for purposes of disguised sales under section 707; and (ii) for determining whether “bottom-dollar payment obligations” provide the necessary “economic risk of loss” to be taken into account as recourse liabilities.

It is not clear whether Treasury will identify any additional regulations or what will result from this review. However, Treasury has requested comments by August 7, 2017. Taxpayers impacted by these regulations should consider commenting on whether the regulations should be modified or repealed.
Ireland Signs OECD Multilateral Instrument

On June 7, 2017, Ireland was one of 68 countries to sign the Organisation for Economic Co-operation and Development’s (OECD) Multilateral Instrument (MLI). The MLI will incorporate new provisions agreed to under the OECD/G20 base erosion and profit shifting (BEPS) project into many of Ireland’s double tax treaties (DTTs).

The MLI represents a significant development in international tax because it is the first time a multilateral convention has been agreed to for updating a series of bilateral treaties. Essentially the MLI will enable Ireland to amend up to 71 of its 72 existing DTTs to ensure that they are BEPS compliant without having to renegotiate the treaties. It has been bilaterally agreed that the existing DTT between Ireland and the Netherlands will be excluded from the MLI, because that DTT is currently being renegotiated.

The following are some of the more important changes that will be implemented by Ireland:

1. The inclusion of a tie-breaker test for determining tax residence for dual resident entities;
2. The adoption of a principal purpose test (PPT) which will introduce a general anti-avoidance clause aimed at preventing treaty abuse; and
3. Implementation of several measures related to improving dispute resolution, such as the mutual agreement procedure, more efficient corresponding adjustment mechanisms, and mandatory binding arbitration to ensure disputes are resolved.

However, Ireland will opt out of several articles of the MLI, such as:

1. Article 5 (application of methods for elimination of double taxation), which relates to methods to address problems when a country uses the exemption method to relieve foreign tax;
2. Article 10 (anti-abuse rule for permanent establishments situated in third jurisdictions), which targets certain arrangements where foreign branch profits are exempt from tax; and
3. Article 12 (artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies), which introduces a new test for when an agent can constitute a permanent establishment (i.e., a taxable presence).

The opt-in/opt-out nature of the MLI provisions offers a certain degree of flexibility in order to encourage signature by as many states as possible. However, changes to the DTTs depend upon both treaty countries to each relevant DTT adopting the same changes under the MLI (i.e., a change can only be made if both parties have adopted it). If Ireland adopts a change under the MLI and the DTT partner does not, the relevant DTT will not be updated.

The effective date for the changes is not yet known because a number of stages in the ratification process include several waiting periods. The DTTs will be amended when both Ireland and the relevant treaty partner have fully ratified the MLI into their domestic law. Accordingly, the earliest date from which changes are likely to apply is January 1, 2019.

Overview of Proposed UK Changes to the Carried Forward Losses Regime

The UK recently introduced significant changes on how corporation tax losses can be carried forward and used against profits in future periods. Although largely beneficial to smaller companies, for larger corporations these rules are likely to increase the complexity of the UK corporate tax loss system as well as potentially accelerate cash tax payments. Because of the recent general election, it is not clear when these new changes will take effect. However, they are expected imminently.

Under the current rules, carried forward losses can only be set against the profits of the same trade that generated the losses. They are not available to be set against future profits arising under a different income stream, nor can they be used by other group members. These restrictions can often lead to companies being unable to utilize certain types of losses, and these losses effectively become “trapped” within the company.
However, a benefit of the current system is that a company can continue to use carried forward losses to reduce taxable profits arising from the same trade to zero, therefore potentially deferring the payment of corporation tax until those losses have been completely utilized.

The new carried forward loss rules are designed to increase flexibility over the profits that carried forward losses can be relieved against while ensuring that businesses pay tax in each accounting period in which they make substantial profits. These objectives are intended to be achieved by two principal reforms:

- Losses arising after April 1, 2017, can be carried forward to future periods and either set against taxable profits from different activities within a company or surrendered to other group members; and
- From April 1, 2017, the amount of annual profits that can be relieved by carried forward losses (both pre- and post-April 1, 2017 losses) will be limited to 50%, subject to a £5m allowance per group.

As indicated above, the new regime essentially creates two separate carried forward losses regimes—one that applies to losses that arise before April 1, 2017, and one that applies to losses that arise after April 1, 2017. Essentially, for pre-April 1, 2017 losses, there is no positive change to the current regime and no increased flexibility. Losses will still only be carried forward and set against future profits of the same trade, while (subject to the £5m allowance described below) the profits against which such losses can be offset are restricted to 50% of the annual profits of the relevant trade in the relevant period.

Real flexibility has been introduced for losses arising post-April 1, 2017, although this flexibility also comes with the 50% profit restriction. Carried forward post-April 1, 2017 losses now will generally be able to be used as follows:

- Against the total profits of the company in future accounting periods (i.e., against profits arising under any income stream, from separate trades and also capital gains); and
- Against the total profits of other companies in the same group in future accounting periods (group relief for carried forward losses).

In relation to the £5m allowance, the position for a single company is straightforward, with the 50% profit restriction only applying to relevant profits that exceed £5m. For groups of companies, this £5m allowance applies on a group basis and must be allocated between group members. The legislation contains detailed provisions relating to the allocation of the £5m allowance, with a group effectively free to allocate the allowance as required.

A range of anti-avoidance provisions have been included as well as restrictions on when carried forward losses can be surrendered to other group companies. Furthermore, certain industries are excluded from these new rules because they have their own specialized rules on losses, e.g., banks, oil and gas, life insurance, certain creative industries such as film, and real estate investment trusts.

The primary winners under the new rules will be SME businesses with profits of less than £5m, which will benefit from greater flexibility to carry forward losses without the 50% profit restriction. It is the government’s view that this will account for 99% of all businesses.

However, for larger companies and groups, the carried forward loss rules potentially become vastly more complex. For example, a large retailer with an international group or a banking division will need to separate any pre- and post-April 1, 2017 losses, run separate calculations for its finance activities, and continue to separate out its non-UK activities. In addition, it is likely that the 50% profit restriction will lead to an acceleration of cash tax payments.

Concerns have also been raised in relation to capital-intensive businesses, such as infrastructure and new businesses or technology developments that require significant early-stage investment. The 50% profit restriction is likely to impact financial forecasting and the valuation of these businesses, although the issue for fixed term investment projects has been recognized through the introduction of an unrestricted three-year terminal loss carryback.

New Tax Claim Opportunity for Refund of French Corporate Income Tax

For companies subject to corporate income tax, a participation exemption regime applies to capital gains (and losses) realized on the transfer of qualifying shares (French and foreign shares) that were held for at least two years at the time of the disposal. This type of regime leads to a full corporate tax exemption for the gain but a 12% lump sum tax at the 33.33% corporate income tax rate (effective taxation of 4%). Capital losses generated by disposing of the qualifying shares are not deductible but can be offset against gains of the same nature.

However, according to administrative guidelines, if a capital loss is realized over a fiscal year where a capital gain of the same nature is recognized, any gross gains thus realized remain taxable even in cases where a company recognized a net capital loss.

The French Administrative Supreme Court (Conseil d’Etat, 14 June 2017, n°400855, Orange Participations) has cancelled the administrative guidelines that provided for the 12% lump sum tax on the gross amount of any long-term capital gains realized over a
fiscal year, regardless of any capital loss realized over the fiscal year at issue.

This cancellation is based on parliamentary comments made when the legislation was changed in 2012.

Therefore, the corresponding corporate income tax (i.e., 4% of the capital gain) paid over fiscal years 2014, 2015 and 2016 by companies having generated a net capital loss over those fiscal years can be claimed before the French tax authorities. The three-year statute of limitations applies here so claims will have to be submitted before December 31, 2017, in order to obtain a refund for fiscal year 2014 (and following fiscal year) capital gains.

On May 19, 2017, in a favorable decision regarding the CVAE tax, the French Constitutional Court declared that the computation method for a company’s part of a tax consolidated group is contrary to the Constitution.

A company’s added-value contribution (CVAE) is a tax owed by companies with a turnover exceeding €152,500. In practice, only companies with a turnover exceeding €500,000 are within the scope of that tax. French tax legislation provided that, for companies that are part of a tax consolidated group, the applicable CVAE rate was determined based on the aggregate of the tax group members’ turnovers. This has led to an increase of the CVAE individually owed by tax consolidated companies compared to the amount that would have been paid if they were not part of such a group.

It is now possible to file a claim for the CVAE paid in 2016 and 2017 (i.e., the CVAE for 2015 and 2016) before December 31, 2017. This claim could benefit companies that generate a low standalone turnover whereas the tax consolidated group generates a high one (preferably exceeding €50m).

In addition, the installments for the CVAE for June and September 2017 can also be decreased since the legal provisions at issue are considered void.

To estimate the opportunity for such claims, Eversheds Sutherland Paris just introduced claims to obtain reimbursement of the CVAE for a total amount of €1.3m for a tax consolidated group of companies generating a consolidated annual turnover of €132m.

In a draft directive released on June 21, 2017, the European Union has proposed an amendment to its existing Directive on Administrative Compliance (DAC) to require all member states to enact legislation relating to financial and tax advisers selling a wide range of tax planning or tax avoidance schemes to companies or to individuals.

The legislation would require advisers to report the details of schemes that they have advised on to their home tax authority. An adviser can comply with the requirement by providing a copy of the information given to the client or clients. In cases where the adviser is outside the EU or is prevented by legal or professional privilege rules from making the disclosure, the obligation is shifted directly to the taxpayer using the arrangements.

The EU proposals are similar in many respects to existing legislation in the United Kingdom. Both work by providing a list of “hallmarks” or characteristics against which an adviser must assess any arrangements that he or she has advised on or used. If any of these characteristics are present, then the adviser must report the scheme to the home state tax authority, which will also exchange the information with other EU member states. The EU proposals have a wider list of hallmarks than the UK with a particular emphasis on cross-border tax avoidance.

The initial proposed list of 18 “hallmarks” includes:

- Tax arrangements sold with a confidentiality clause attached
Italian Procedure Allows Voluntary Disclosure of the Existence of a PE

A recently enacted law in Italy contains a new procedure to facilitate the disclosure of the existence of a permanent establishment (PE) in Italy. Called "cooperation and enhanced collaboration" or the Web tax, the new procedure allows multinational groups running businesses in Italy to voluntarily disclose the presence of a hidden PE and obtain a substantial reduction in fines.

The new procedure allows the taxpayer to benefit from:

i. Reducing taxes by 1/6 of the original amount (in the range of 15% and 20% of the higher tax);
ii. Not filing criminal charges against the individuals representing the non-resident company; and
iii. Joining Italian cooperative compliance program, with all of its related benefits.

In order to apply for the new procedure, both of the following conditions must be met:

- The global consolidated turnover of the group exceeds Euro 1 billion and
- Annual sales in Italy exceed Euro 50 million (selling goods or providing services), even if performed by other companies belonging to the same group.

However, if a taxpayer applies for the new procedure and a settlement with the Italian Tax Authorities is not reached, the Italian Tax Authorities are allowed to issue a tax assessment if a PE in Italy is detected and apply the ordinary penalties.

If the Italian Tax Authorities are already running an audit on the taxpayer (or another group company involved in the business operated in Italy), the new procedure is not available.
Name/office/specialty
Adam Cohen, Washington, DC, Employee Benefits

Where are you from?
I grew up in Cherry Hill, New Jersey and then Potomac, Maryland

What is your best childhood memory?
Biking around the neighborhood with friends until we would somehow hear our parents shouting for us for dinner from 6 miles away.

What is one of your guilty pleasures?
Sending a really good sarcastic/humorous firmwide e-mail.

Who is someone you look up to?
Is this question mocking my height? Yes, I have to look up to many people but this question is insensitive. On the serious side, my grandmother, who passed away a few years ago, and whose perseverance in the face of adversity, loyalty to family, and cheerful disposition is something I’ll always remember and emulate.

What word or phrase do you commonly overuse?
I say awesome way too often, which reveals that I grew up in the 80s and generally think things are really awesome.

What is the best trip you’ve taken or bucket list destination?
Bike ride across Italy where the travel company transported our bags and handled all the logistics.

What is your perfect meal?
Chocolate mousse. Yes, that is a meal.

What is something you wish you knew when you were younger?
Just how true the advice “be yourself” really is.

What is your hidden talent or interest?
I would say being a Bruce Springsteen fan, but I guess that is not hidden. I also enjoy gardening a lot – vegetables, flowers, etc.
Upcoming US events

July
- Counsel Charlie Kearns presents “The Continuing Evolution of E-Commerce Issues” at the NYU Summer Institute in Taxation on July 30-August 2.
- Partner Carol Tello presents, “Tax Transparency” at the Joint Meeting of the USA and Colombia IFA Branches on August 25, 2017, in Bogota.
- Partner Nick Djuric presents, “Estates Tax Update” at the Georgia Society of CPAs Southeastern Accounting Show on August 31, 2017, in Atlanta, Georgia.

August
- Partner Todd Lard presents on a state taxation panel at the 2017 CWAG Annual Meeting in San Francisco, California taking place July 30-August 2.
- Counsel Allison Wielobob presents, “Promises and Pitfalls of IRAs” at the PLI Program on July 31, 2017 in Washington, DC. Learn more.

September
- Partners Jeff Friedman and Michele Borens will present at the TEI Seattle Meeting on September 17, 2017, in Seattle, Washington.
- Associate Chris Lutz presents “Local Taxes” at the IPT Sales Tax Symposium taking place September 17-20, 2017, in San Antonio, Texas.

October
- Team members of the Eversheds Sutherland SALT Team will meet and present at the BTI Annual Conference taking place October 15-18, 2017, in Amelia Island, Florida.
- Eversheds Sutherland is a proud sponsor of the TEI Dallas SALT Day program taking place October 17, 2017, in Dallas, Texas. SALT Team members will present.
- Eversheds Sutherland is a proud sponsor of the COST Annual Conference, taking place October 22-25, 2017, in Orlando, Florida. The SALT Team presents, and details are below:
  - Partner Jonathan Feldman presents, “Are You Prepared? MTC and States to Finally Begin Transfer Pricing Effort”
  - Partner Carley Roberts presents, “The SALT Academy Awards”
  - Senior Counsel Eric Coffill present, “California’s State Board of Equalization is Being Substantially Replaced”
- Eversheds Sutherland is a proud sponsor of the TEI Annual Conference, taking place October 22-25, in Toronto, Canada.
- Partner Jeff Friedman presents “Multistate Tax Cases and Issues” at PICPA’s Annual Multistate Tax Conference on October 24, 2017, in Malvern, Pennsylvania. Learn more.

November
- Partners Karl Zeswitz and Ellen McElroy present at the ACC Houston Best Practices Lunch, taking place November 7, 2017 in Houston, Texas.
- Partner Carol Tello presents at PLI’s Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings 2017 November 15-17, 2017, in Chicago, Illinois. Learn more.