Insurance Tax

Representing life and property/casualty insurance companies in a variety of tax matters, our insurance tax practice covers company and product tax issues, and involves both tax controversy and tax planning work:

- Audit, appeals, and tax litigation
- Tax advice and IRS national office practice
- Mergers and acquisitions, workouts, and debt restructurings

Our lawyers have a wealth of technical knowledge in the insurance tax area, covering current and prior laws, as well as ongoing legislative and administrative developments. Of equal importance is the fact that our lawyers have extensive practical experience in advising insurance companies and representing them in administrative and judicial forums. The diversity and strength of our practice give our insurance company clients access to in-depth experience that covers any federal tax issue that may arise.

Noteworthy

- *Chambers USA*, Tax, DC (2006-2020)
- *Practical Law Company*, Tax, DC (2011)
Audit, Appeals, and Tax Litigation

We represent insurance companies at all levels within the Internal Revenue Service (IRS) and in the courts, including the US Tax Court, the US Court of Federal Claims, and federal district courts.

During the audit phase, we assist our clients to establish document retention policies, analyze and evaluate factual and legal issues, make presentations to local IRS officials in order to defend issues and eliminate potential adjustments, and prepare referrals to the IRS National Office (National Office) for technical advice. Additionally, we work closely with our clients during the administrative stages of each case in drafting refund claims; negotiating and documenting administrative settlements; responding to or contesting IRS information and document production requests; and securing credible and effective expert witnesses.

We routinely prepare protests of proposed IRS audit adjustments and represent clients in conferences with many different IRS Appeals Offices, including those in New York, Boston, Hartford, Philadelphia, Los Angeles and Des Moines. We work to resolve cases favorably at the administrative level through compelling presentations directly to tax agencies, for example obtaining National Office guidance in order to avoid the need for litigation.

When litigation proves necessary our lawyers are at the cutting edge of evolving judicial practice and procedures, strategy, and tactics. We have significant, practical, and recent trial and appellate experience. This experience, combined with our knowledge of substantive insurance company tax issues, has enabled Steptoe to present insurance tax cases persuasively in the courts and, when appropriate, to negotiate effectively with the United States Department of Justice and the IRS to achieve favorable settlements.

Tax Advice and IRS National Office Practice

Clients turn to Steptoe for advice with respect to the following matters:

- Insurance company tax matters such as reserve issues, reinsurance arrangements, captive arrangements, consolidated return questions, accounting and separate account issues, DAC issues, disclosure requirements, and penalty issues.
- Investment tax issues, including cross-border investment transactions, original issue and market discount, interest rate agreements, hedging and swaps, and partnership, foreclosure, and workout issues.
- Product tax matters regarding annuity questions, variable contract issues, the definition of life insurance, and corporate-owned life insurance matters.

We assist clients in resolving important tax issues in the IRS National Office, often by requesting technical advice from the National Office. Our requests have covered various tax issues such as section 807 reserve issues, policyholder dividend issues, separate account questions, and product tax issues. We also provide comments and testimony on behalf of our clients with respect to proposed regulations and other matters pending at the United States Department of the Treasury (Treasury). We have submitted comments relating to the section 461(h) economic performance regulations, the section 848 DAC regulations, and the section 401(a)(9) minimum distribution regulations.

In addition to the formal National Office contacts described above (ruling requests, technical advice requests, ruling comments, etc.), we maintain regular informal contacts with Treasury and IRS officials which enables us to respond quickly to our clients’ needs and effectively present their concerns to those officials.
Mergers & Acquisitions, Workouts, and Debt Restructurings

Steptoe represents insurance companies with respect to acquisitions, restructurings, and dispositions, both taxable and tax free. In this regard, we provide advice with respect to proposed insurance company acquisitions, with emphasis on structuring tax-free reorganizations under section 368, tax attribute issues under sections 381 and 382, consolidation, assumption reinsurance, DAC, product qualification, and premium tax issues.

We help structure insurance company asset and stock acquisitions and dispositions. In these transactions, we analyze sections 304 and 338, as well as DAC, consolidation, and reinsurance issues. We advise affiliated groups of insurance companies with respect to consolidated return issues arising from dispositions, acquisitions, and internal restructurings. We also provide advice regarding tax sharing agreements.

In addition, we advise clients regarding the formation of holding companies, arranging insurance company joint ventures, and selling interests in those arrangements. In this context, we consider section 338, assumption reinsurance, and consolidation issues. Our transactional work involves issuing opinion letters; discussing issues with Congressional, Treasury, and IRS personnel; and pursuing IRS private letter rulings.

We also provide tax advice to both debtors and creditors in informal workouts, bankruptcy cases, and corporate debt restructurings. Our lawyers advise clients on issues concerning the recognition of gain or loss by the creditor, as well as bad debt or worthless securities deductions that may be available. We also consider whether the modification of the terms of the debt instrument in these cases will give rise to cancellation of indebtedness income for the debtor, and whether original issue discount, acquisition premium, amortizable bond premium, bond issuance premium, and bond retirement premium will arise. We often advise clients regarding the special rules that apply when debt is assumed in connection with a sale or exchange of property and the debt is materially modified as part of the sale or exchange.

In corporate debt restructurings, we advise clients on qualification as a tax-free recapitalization, the application of sections 382 and 269, the allocation of payments to principal and interest, and debt-equity considerations. We consider cash-for-debt exchanges, debt-for-debt exchanges, stock-for-debt exchanges, the acquisition of debt by related parties, and certain tax-free reorganizations.

News & Publications

CLIENT ALERTS

Proposed Regulations Released Regarding Section 199A Deduction

August 13, 2018
Daily Tax Update

IRS Issues Interim Guidance on Section 4960
December 31, 2018

IRS Issues Final Regulations for Public Approval of Tax-Exempt Private Activity Bonds
December 28, 2018

TIGTA Issues Two Audit Reports
December 26, 2018

Treasury Publishes IRS Lapsed Appropriations Contingency Plan
December 21, 2018

JCT Releases TCJA Blue Book
December 20, 2018

Senate and House to Vote on Continuing Resolution
December 19, 2018

New York Attorney General Announces Stipulation Dissolving Trump Foundation
December 18, 2018

New Version of Brady Tax Bill Released
December 17, 2018

IRS, Treasury Issue Guidance on Previously Taxed Earnings and Profits
December 14, 2018

IRS and Treasury Release Proposed BEAT Regulations
December 13, 2018

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Primary Contact

J. Walker Johnson

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