Tax Issues Impacting MLPs & Cross-Border Investments

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Master Limited Partnership Association
2015 Annual Meeting
October 1, 2015

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Tax Issues Impacting MLPs & Cross-Border Investments

A. Overview of Tax Issues

1. Many MLPs engage directly or indirectly in business activities outside the United States, such as when pipeline systems cross borders or subsidiaries have businesses in other countries.

2. Operations outside the U.S. are subject to local country tax. To eliminate compliance burdens on unit holders, operating entities are structured to be subject to local tax. For U.S. tax purposes, such entities are structured to be viewed as flow through.

3. Local country withholding taxes are generally imposed on dividends or payments of interest from foreign entities to the U.S. MLP. Such taxes are imposed at the time of cash payment.

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B. Overview of Treaty Issues

1. MLPs are treated as pass-through entities for U.S. tax purposes. Thus, no U.S. tax is paid at the entity level and the MLP's income is considered earned by all the unit holders.

2. Tax treaties do not treat partnerships as eligible for treaty benefits. Instead, the partners (or unit holders) of a partnership are eligible for treaty benefits.

3. Interests in MLPs are generally held in street name and are subject to daily changes in ownership. Identification of unit holders on the date of a remittance is not possible.

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B. Overview of Treaty Issues (cont'd)

4. After the end of a year, MLPs receive information regarding the ownership of partnership units during the year and allocate partnership items on a monthly convention.

5. In the case of remittances received by an MLP from foreign sources, U.S. unit holders should be entitled to treaty benefits on an allocated share.

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B. Overview of Treaty Issues (cont'd)

6. It is not possible to provide relevant ownership information to a foreign withholding agent when payments are made to an MLP because
   a) it is not possible for the MLP to know who its unit holders are at any particular moment in time, and
   b) The cost of withholding taxes are spread to all unitholders based on the monthly convention.
7. U.S. unit holders are precluded from obtaining U.S. tax treaty benefits unless individual unit holders seek refunds from foreign governments. Materiality of each unit holder share of withholding taxes and costs/complexity of refund applications mean that unit holders will not receive treaty benefits. To provide similar benefits, MLPs structure ownership through other countries.
8. The current OECD/BEPS initiative means MLP holding company structures may be at risk.

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C. Business Issues

1. Local politics impact infrastructure investments.
2. “Collateral damage” results from treaties not applying.
3. Other cross-border tax issues exist – e.g., withholding, compliance.
4. Issues unique to investments in Canada and Mexico.
5. Use of Netherlands or other treaty jurisdictions as “intermediaries” for investments in Canada, Mexico, etc.
6. When does tax wag the economic dog in cross-border deals?