



REPORT OF THE FEDERAL & REGULATORY AFFAIRS COMMITTEES

September 29, 2017

As MLPA's federal legislative and regulatory activities this year have been closely intertwined, the Federal and Regulatory Affairs Committees provide the following combined report to the Membership.

Tax Reform

The prospect of tax reform has been and continues to be a hot topic in Washington and throughout the country. Efforts to advance proposals to replace the current system (or at least to provide significant tax cuts) have ebbed and flowed throughout the year. For much of the year, the public has been waiting for details on the House Republican Blueprint (Blueprint) and the Administration's broad set of principles. Of particular interest is the Blueprint's proposal to allow a 25% tax rate on income individuals receive from pass-throughs and the President's proposal of a 15% tax rate on pass-through income. On September 27, the Big Six (Senate Majority Leader McConnell, Senate Finance Committee Chairman Hatch, House Speaker Ryan, House Ways and Means Committee Chairman Brady, National Economic Council Director Cohn, and Treasury Secretary Mnuchin) released general principles to be used as the basis for the House Ways and Means and Senate Finance Committees' action on tax reform. Like the other plans, this Framework includes a proposed lower rate of 25% on income individuals receive from pass-through entities, yet does not provide specifics. We look forward to learning more and working with Congress and the Administration as they develop the details around this proposal and the other principles set forth in the Big Six's Tax Reform Framework.

To date, members of the Federal and Regulatory Affairs Committees have met numerous times with Members and staff on the Ways and Means and Finance Committees and in the Leadership (including a DC Fly-In on March 29) to educate them on the success and importance of the flow-through structure and our legislative priorities, which include:

- The continuation of the current flow-through structure for all MLPs.
- The importance of allowing our unit holders to be eligible to receive any lower rate on income from pass-through entities that Congress and the Administration may enact.
- The exemption of MLPs from a mechanical rule that would bifurcate items of certain partnership income into income from services and income from invested capital, similar to the proposal in Section 1502 of then Ways and Means Committee Chairman Camp's 2014 Tax Reform draft. This provision, often referred to as the 70/30 split, would characterize 70% of any income derived by partners that materially participate in the activities of a partnership to be treated as income from services (*i.e.*, subject to taxation at ordinary income rates) and the remaining 30% to be taxed as pass-through income (*i.e.*, subject to

the 25% rate as proposed by the Blueprint or the 15% rate as proposed by the Administration).

- After conversations with Congressional staff, MLPA also provided an alternative approach to the bright-line 70/30 split for publicly traded partnerships if an exemption was found not to be possible.

In addition to the aforementioned activities, Lori Ziebart, on June 28, participated in a small meeting at the White House discussing tax reform priorities with other energy Association heads, Gary Cohn, National Economic Council (NEC) Director and other NEC and Treasury staff; and MLPA, on July 17, submitted written recommendations to Senate Finance Committee Chairman Hatch on our tax reform priorities; and

MLPA will continue to meet with Members, staff and the Administration to advocate for MLPA's priorities as the tax reform debate advances. We welcome your input and participation.

Copies of MLPA's papers on the 70/30 split as well as our letter to Chairman Hatch can be found in the Members' Section of the website.

Large Partnership Audit Regime

On November 2, 2015, the Bipartisan Budget Act of 2015 (BBA) was enacted into law. Included in the BBA are provisions under Section 1101 that repeal the current partnership audit rules and replace them with a new regime designed to assess and collect tax due from audits at the partnership level. The legislation includes provisions that allow for the push-out of adjustments to upper tier partnerships. As a result of a statement in the "General Explanation of Tax Legislation Enacted in 2015" prepared by the Joint Committee on Taxation and published in March 2016 – JCS-1-16 – (BlueBook), questions arose as to whether partnerships could push-out adjustments beyond the first tier.

In response, members of the MLPA Federal and Regulatory Affairs Committees worked closely with Members and staff of the House Ways and Means Committee and the Senate Finance Committee to clarify, through technical corrections, that the law permitted partnerships to push-out adjustments beyond the first tier. On December 6, 2016, the Technical Corrections Act of 2016 was introduced and included language clarifying the intent of Congress to allow push-outs beyond the first tier.

This legislation did not become law in 2016 and has, as yet, to be re-introduced. Members of the Federal and Regulatory Affairs Committees have been and continue to work closely with Members and staff of the House Ways and Means Committee and the Senate Finance Committee to advance the re-introduction of the Technical Corrections bill.

Additionally, in response to public statements by the IRS regarding the administrability of tracking adjustments through various tiers, PwC, together with members of the Federal Affairs Committee met with staff from the Joint Committee on Taxation, the Finance Committee, the Treasury Department and IRS to demonstrate how adjustments currently are tracked through the tiers. The conversations were productive and lines of communication remain open allowing for further discussions as the staff move forward in drafting the regulations.

On August 11, MLPA filed comments on the Large Partnership Audit Regime proposed regulations. On September 18, the IRS/Treasury held a hearing on the proposed regulations. MLPA did not testify. Minimal mention was made by the witnesses about the need to clarify that partnerships can push-out adjustments beyond the first tier and the government staff did not discuss it.

MLPA will continue to work with the tax writing committees, Treasury and the IRS as the legislative and regulatory processes advance.

Webcasts and Written Comments on Proposed and Final Regulations

The Regulatory Affairs Committee, through PwC, conducted four webcasts on the following proposed and final regulations, all of which are available in the Members' Section of the website:

- February 8: Final Regulations on Qualifying Income Under Section 7704(d)(1)(E)
- May 9: Remaining Qualifying Income Issues
- May 16: "Dual Status" Partner/Employees
- May 23: Final and Temporary Regulations Under Sections 752 and 707

MLPA has submitted to the Treasury and IRS the following comments, all of which can be found in the Members' Section of the website:

- January 17: Proposed Regulations on the New Partnership Audit Regime Enacted as Part of the Bipartisan Budget Act of 2015
- January 19: Final Regulations under Section 7704(d)(1)(E) – Qualifying Income from Mineral and Natural Resource Activities
- August 11: Comments on the Proposed Regulations for the Implementation of the New Partnership Audit Regime Enacted as Part of the Bipartisan Budget Act of 2015
- September 8: October 5, 2016 Regulations Regarding Allocation of Liability for Disguised Sales

Federal Energy Regulatory Commission (FERC) Submissions

On July 1, 2016, in *United Airlines v. Federal Energy Regulatory Commission*, the U.S. Court of Appeals for the District of Columbia Circuit found that the Federal Energy Regulatory Commission (FERC) failed to adequately demonstrate that its long-held income tax allowance (ITA) policy did not provide a double-recovery of taxes to partnership investors and remanded the case to FERC.

On December 15, 2016, FERC issued a Notice of Inquiry requesting comments on how to address any double recovery resulting from its current ITA and rate of return policies. MLPA submitted comments in response to the Notice on March 8, 2017 and reply comments on April 7, 2017.

More information on this case and MLPA's comments can be found in the Members' Section of the website.

New Advocacy Tool

PwC, working with MLPA and many of our member companies, has developed an interactive map that provides, on a non-attribution aggregated basis, information on the number of unit holders, the average investment amount, and the total dollars of investment held by unit holders in a Congressional District. While this information is impactful, we believe that by adding additional information such as the

number of employees, property taxes paid, and original CAPEX per Congressional District will add to the value and effectiveness of this tool. As such, in the coming weeks, we'll be reaching out to member companies that are PwC clients that already have signed consent agreements to provide this additional information.

To better understand the benefits of this new advocacy tool, we will be holding a webcast in October to demonstrate the technology.