University of Texas
2021 Oil and Gas Tax Bootcamp
Part Three - Session 2

Basic Oil and Gas Transaction Structures

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Agenda - Session 2

- Current law applicable to transaction structures
- Proposed Biden Administration changes to current law
- Farmout Exploration Financing
- "DrillCo" Development Financing
- "Cash and Carry" Development Financing
- Production Payment Acquisition Financing

Tax Cuts and Jobs Act of 2017

- Enacted into law on December 22, 2017
- Most significant changes to the Internal Revenue Code since the Tax Reform Act of 1986
- Changes made to both individual and corporate tax law impact acquisition financing and project financing
- Changes impact both domestic and international tax planning for financing oil and gas operations

Key TCJA Provisions Impacting Oil and Gas Investments

- Rate changes effective 1/1/2018 provided for 21% corporate tax rate and 37% individual tax rate (with potential section 199A QBI deduction
- Business interest expense deductions generally limited to the sum of (i) business interest income, and (ii) 30 percent of the adjusted taxable income ("ATI")
  - ATI for taxable years beginning before 1/1/22 computed without regard to depreciation, depletion and depreciation ("DDA")
  - Thereafter ATI decreased by DDA
- Repeal of corporate AMT
- NOLs limited to 80% of taxable income for losses arising in tax years beginning after 2017
  - Carry back eliminated but carryforward indefinitely

Key TCJA Provisions Impacting
Oil and Gas Investments

- Allows 100% expensing of qualified property placed in service after September 27, 2017 and before 2023. 100% expensing percentage phases down starting in 2023 by 20 percentage points for each of the five following years.
  - Elimination of original use requirement (i.e., also applies to “used” property)
  - Qualified property excludes certain public utility property, “tax exempt use” property and certain property held by an electing real property trade or business.
- Section 199 deduction - repealed for taxable years beginning after 2017
- Like-kind exchanges - limited to exchanges involving domestic real property (including interests in elect out partnerships that own oil and gas) for exchanges completed after 2017
- Energy provisions - do not repeal any conventional energy tax credits and leaves untouched the deductibility of intangible drilling costs, taxpayers’ eligibility to take percentage depletion and the designation of certain natural resource related activities as generating qualifying income under the publicly traded partnership rules; favorable exemption of FOGEI from GILTI

Key CARES Act Provisions Impacting
Oil and Gas Investments

- NOLs generated in 2018-2020:
  - Can generally be carried back 5 years
  - Not subject to the 80% limitation
- ATI limitation for business interest expense limitation increased from 30% to 50% for 2019 and 2020
  - Election to use 2019 ATI instead of 2020 ATI
  - Special rules for partnerships