Rock, Paper, Scissors?
Choice of Entity After Tax Reform

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Topics

I. **Choosing Ab Initio vs. Changing Midstream**

II. **Defining the Universe of Entities**
   - A. **Corporate Entities (C and §1202**
   - B. **Tax Pass-through Entities**

III. **Tax Considerations in Entity Choice**
   - A. **Tax Rates/Effective Rates**
     1. **C Corporations**
     2. **§1202 Corporation**
     3. **Pass-Throughs and §199A**
     4. **Carried Interests**
   - B. **Beyond Rates: Other Tax Considerations**

IV. **Overriding Non-Tax Considerations**

V. **Those Who Have Switched to C and Why**

VI. **Practice Problems**

VII. **Appendix – Rate Calculations**

Choice of Entity – What is the Context?

- **New Business.**
- **Existing Business:** Restructure or convert? Is the current structure the optimal structure for tax purposes or should it change its structure to improve its tax result (by, for example, becoming a C corporation)?
- Dependent Upon Client Projections ("we'll be IPOing next year!!").
- Model results of structure
- No one-size fits all

Choice of Entity: the Menu (Read Through Tax-Colored Glasses)

- Sole Proprietorship.
- Pass-through entities ("RPEs" in §1.199A-1(b)(9)).
  - S corporations.
  - Partnerships (LPs, GPs, LLPs, PTPs, LLCs).
  - Disregarded entities ("DREs").
- Corporate entities.
  - C corporations.
  - C corporations that qualify under section 1202.
- Others.
  - PTPs.
  - REITs.
  - Cooperatives.

Tax Rates After Tax Reform

- C Corporation:
  - 21% rate.
  - No longer graduated.
  - Corporate alternative minimum tax repealed (AMT).
  - No favorable capital gains rate.
  - Effective rate on earnings distributed to shareholders **is 36.8%** (21% plus 20% on qualified dividend income of $79).
  - If earnings are not distributed, 21% rate becomes effective rate, but beware of numerous anti-abuse regimes.

Tax Rates After Tax Reform – Anti-Abuse

C Corporation:

- **Caution**: C corporations are subject to numerous anti-abuse regimes:
  - Personal holding company (IRC § 541).
  - Accumulated earnings tax (IRC § 531).
  - Personal service corporation (IRC §§ 170, 267, 269A, 280H, 441, 448).
  - Closely held corporation (or closely held C corporation) (IRC §§ 170, 465, 469).
- But IRC § 341 (collapsible corporation recharacterized as sale of ordinary income assets) is still dead.

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Also available as part of the eCourse
2018 Taxation eConference

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