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OnPoint

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SCHNEIDER DOWNS

INSIGHT ▪ INNOVATION ▪ EXPERIENCE

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KEY TAX DATES

July

30

Employers' Taxes. Employers of nonagricultural and nonhousehold employees must file return Form 941 to report income tax withholding and FICA taxes for the second quarter of 2010.

September

15

Estimated Tax. Payment of third installment of 2010 estimated tax by calendar-year corporation.

Estimated Tax. Payment of third installment of 2010 estimated taxes by individuals, by trusts and by estates and certain residuary trusts in existence more than two years.

Corporations. Last day for filing 2009 income tax return by calendar-year corporations that have obtained automatic six-month filing extension.

See Page 5 for additional key dates

ARE YOU READY TO DEFEND YOUR RED FLAG REQUIREMENTS?

by Frank E. Dezort III, Senior Manager, Internal Audit and Risk Advisory Services

Because of escalating concern over identity theft, U.S. federal and state governments are proposing and implementing more restrictive regulations.

Identity thieves use people's personally identifying information to open new accounts and misuse existing accounts, creating havoc for consumers and businesses. The Federal Trade Commission (FTC) reports that more than 9 million identities are stolen annually in the U.S. alone. Thirty-seven percent of complaints to the FTC deal with identity theft—by far the largest category of complaints the agency must handle. The Identity Theft Resource Center estimates that insiders were responsible for nearly a quarter of all known incidents involving financial institutions in 2008. That trend appears to have continued in 2009 and 2010.

The latest regulations include the new Red Flags Rules issued by the FTC, federal bank regulatory agencies, and the National Credit Union Administration. These regulations require financial institutions and creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The prevention programs must provide for the identification, detection, and response to patterns, practices, or specific activities—known as "red flags"—that could indicate identity theft.

These Rules—already delayed a number of times—had initially been required to be in place by November 1, 2008. With the exception of financial institutions and credit unions (which are already forced to comply), enforcement was then suspended until May 1, 2009, and further suspended again until August 1, 2009, to permit additional time for compliance. The FTC determined that more guidance over the requirements was necessary, and enforcement of the rules was suspended yet again, and was scheduled to begin June 1, 2010. Recently, at the request of several members of Congress, the FTC is further delaying enforcement of the rule through December 31, 2010, to allow Congress to consider legislation that would affect the scope of the entities covered by the Rule.

What was the reason for the delays?

During the course of communicating the requirements, FTC staff learned that some industries and entities within the FTC's jurisdiction were uncertain about their coverage under the Rules. These entities indicated that they were not aware that they were engaged in activities that would cause them to fall under the FACT Act's definition of creditor or financial institution. Many entities also noted that, because they generally

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Structuring an Acquisition or Sale of a Business: Key Considerations

by Graig T. O'Shane, Vice President, Schneider Downs Corporate Finance, LP

Structuring an acquisition or sale of a business can be a complicated matter from the financial, tax and legal perspectives. The following is an overview of the two most common methods to structure transactions and the key issues that buyers and sellers should consider in each structure.

The two most common forms of transactions are asset transactions and stock transactions. Each structure presents positive and negative attributes to both the buyer and the seller. The primary differences between the two involve which party will be responsible for post-closing liabilities (both known and unknown) and the tax consequences to the buyer or seller. Generally, asset transactions benefit the buyer, and stock transactions benefit the seller.

Stock Transactions Tend to Favor the Seller

In a stock transaction, the buyer acquires the outstanding shares of stock of the seller, and the corporate structure remains intact.

Buyer's Perspective: Some advantages to the buyer in this transaction structure are: 1) leases and contracts remain in place, unless a change-of-control provision is written into these agreements; and 2) tax credits and tax loss carry-forwards are easily transferred to the buyers (subject to certain limitations under the tax code).

GRAIG T. O'SHANE
SCHNEIDER DOWNS CORPORATE FINANCE, LP
Vice President

The key downside of a stock transaction from the buyer's perspective is that the buyer assumes the operating liabilities of the target (both known and unknown), thus significantly increasing the risk of the transaction to the buyer. An unknown environmental liability or lawsuit will be the buyer's responsibility upon consummation of the transaction, unless the stock purchase agreement indemnifies the buyer or an escrow account is established to protect the buyer post-closing.

Seller's Perspective: If the seller is an S or C corporation, the seller's shareholders pay tax at the more favorable capital gains rate on the difference between the agreed-upon selling price of the business and their basis in the stock.

Asset Transactions Tend to Favor the Buyer

In an asset transaction, the buyer purchases only the desired assets and assumes only specified liabilities from the seller. The seller retains ownership of the legal entity and any assets not acquired, and remains responsible for any liabilities not assumed by the buyer.

In an asset sale, the aggregate purchase price is allocated by a system of priorities among seven asset classes, mostly at their fair market value. The purchase price is first allocated to cash, then to highly liquid assets, then to the values of receivables, then to inventory, then to fixed assets and then to any identified intangibles other than goodwill. The amount not allocated to the first six classes of purchased assets is allocated to goodwill. The allocation of the purchase price is typically negotiated prior to closing.

Buyer's Perspective: Buyers typically prefer asset transactions for two reasons. First, they only purchase the desired assets and liabilities, reducing the legal and financial risks of unknown liabilities. Second, the buyer receives the tax benefit of depreciating or amortizing the "written up" asset basis, improving cash flow in the early years of the transaction through tax benefits.

Fixed assets and intangibles can be "written up," meaning they may be ascribed a greater value than their depreciated book value as recorded on the seller's financial statement. This increase in value is beneficial to the buyer because the buyer can depreciate or amortize fixed assets or intangibles at the higher purchased basis, thus reducing future taxes paid.

Seller's Perspective: Typically, from a seller's perspective, an asset sale is usually less desirable from a tax point of view. If the

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Red Flag Requirements *continued from Page 1*

are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the Rules' requirements too late to be able to comply. The most recent delay was due to Congress becoming aware of unintended consequences of the legislation and the need for clarification of which entities are covered by the rule. This delay may result in a further limitation of the scope of the Rules and those organizations that must comply.

Who must comply with the Red Flags Rules?

Currently the Rules apply to creditors and financial institutions. A financial institution is defined as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other entity that holds a "transaction account" belonging to a consumer. Most of these institutions are regulated by the Federal bank regulatory agencies and the NCUA. Financial institutions under the FTC's jurisdiction include state-chartered credit unions and certain other entities that hold consumer transaction accounts.

Federal law defines a creditor to be any entity that regularly extends, renews or continues credit; any entity that regularly arranges for the extension, renewal or continuation of credit; or any assignee of an original creditor that is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not, in and of itself, make an entity a creditor. Some examples of creditors are finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies and nonprofit and government entities that defer payment for goods or services. Financial institutions include entities that offer accounts that enable consumers to write checks or to make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

What must an organization do to comply?

Under the Red Flags Rules, financial institutions and creditors must develop a written program that identifies and detects the relevant warning signs—or "red flags"—of identity theft. FTC guidelines identify 26 possible red flags. These red flags do not comprise a checklist, but rather, are examples that financial institutions and creditors may want to use as a starting point. They fall into five categories:

- Alerts, notifications or warnings from a consumer reporting agency;
- Suspicious documents;
- Suspicious personally identifying information, such as a suspicious address;
- Unusual use of—or suspicious activity relating to—a covered account; and
- Notices from customers, victims of identity theft, law enforcement authorities or other businesses about possible identity theft in connection with covered accounts.

The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the financial institution or creditor, include appropriate staff training, and provide for oversight of any service providers.

How can an organization achieve compliance?

To determine whether your organization has Red Flag compliance requirements, consider performing the following steps:

- Educate - Educate your organization on the new rules and their impact on your organization.
- Assess - Perform a risk assessment of your environment, using the FTC guidelines of 26 possible red flags and identify the potential Red Flag activities that could occur or have occurred in the past.
- Develop Policies and Procedures– Develop written policies and procedures to detect, prevent and mitigate identify theft. The policies and procedures must identify the potential Red Flag events, given your environment, and define how your organization will detect each Red Flag activity. The policies and procedures must also define how you monitor the plan to ensure its effectiveness, and must state who is responsible for its implementation and administration.
- Gain Approval for the Written Plan - Plan must be approved by the Board of Trustees or a committee of the Board, and be overseen by senior management.

If you have any questions related to the Red Flag compliance requirements or concerns about your organization's requirements or ability to develop an identity theft prevention program, give Schneider Downs a call. We have assisted clients in the implementation of various steps to achieve Red Flag compliance objectives.

FRANK E. DEZORT III
INTERNAL AUDIT AND RISK ADVISORY SERVICES
Senior Manager

NEWSYOUNEED

What's Hot in Tax and Wealth Transfer Planning?

by Frank A. Wisehart, Director, Business Advisors

In today's economic climate, business owners are finding that now is the right time to transfer wealth. The simple fact is that all business owners will eventually exit their business. Timing the exit is the key. Currently, business values are down. This creates a favorable environment to leverage business transition through succession planning, gifting and other tax-advantaged scenarios.

Today, higher rates of return are required to sell a given business. Additionally, long-term growth projections have lessened. This means that lower multiples are used to value businesses. Businesses that typically sold for five to seven times EBITDA (earnings before interest taxes, depreciation and amortization) might now sell for four to six times EBITDA. In addition to the lower pricing models, discounts for marketability have moved higher. This further lowers the value transferred.

Business owners should consider using these economic conditions to their advantage. When values are depressed, a higher percentage of the business can be transferred in periods of economic downturn, compared to periods of prosperity. Periods of prosperity following a recession tend to be inflationary; growth rates increase and multiples rise. If you believe that eventually the economy will turn around, this opportunity to transfer ownership will not last. As economic conditions improve, long-term projections will return to normal, and business values will accordingly rise. Again, we are all exiting the business at some point; now is a great time to consult your business valuation, tax and wealth professionals to leverage this unique opportunity.

Frank Wisehart joined Schneider Downs as Director of our Business Advisory practice, and will be based in the Columbus office. Frank can be reached at 614-586-7118 or by email to fwisehart@schneiderdowns.com. Welcome, Frank!

Q & A

Schneider Downs Wealth Management Advisors, LP

Question of the Quarter

Q. Is it time to give up on international investments?

Over the past two years, the international equity markets as measured by the MSCI EAFE (Morgan Stanley Composite Index designed to measure the performance of developed markets in Europe, Australasia and the Far East) have experienced significant volatility. After recovering strongly in 2009, this index has given back some of those gains due to fear of debt problems in Greece and several euro-zone economies. Even worse, the fear of slow or no euro-zone growth has started to weigh on the U.S. and Asian recovery.

With the beginnings of what appears to be a U.S. recovery, it is no wonder that many individual investors have begun to question their foreign equity exposure. Add to that the still-lingering pain that diversification within a portfolio failed to provide any protection for investors in late 2008 and early 2009.

Our response to the question, however, is NO. Before throwing stones, we would like our readers to step back and ponder a few simple statistics:

1. According to Wikipedia, using data from 2007-2010, of the top 50 companies in the world (private and public) measured by gross revenues, only 15 are headquartered in the United States. In fact, only 3 of the top 10 are U.S.-based corporations.
2. When one removes the privately held companies, the statistics change. In the first quarter of 2009, U.S. corporations represented 6 of the top 10 publicly traded companies. By the fourth quarter of 2009, this number had dropped to 4 of 10.
3. United States publicly traded companies now represent less than one-half of the value of the world's publicly traded companies.
4. Using Gross Domestic Product (GDP) for comparison, in 2009, the European Union's GDP exceeded that of the U.S. The next four largest economies behind the U.S. (excluding individual European economies) are Japan, China, the United Kingdom and Brazil. On an individual basis, Germany and France are both larger than the U.K. Canada ranked 10th in 2009.

Still not convinced that there are opportunities outside the U.S. borders or perhaps that these opportunities are not worth the risk? Here are a couple more statistics to consider. From 1990 through 2009, the United States equity market, compared to equity market returns of developed economies, has not provided the best equity return – not even once. In that same 20-year period, the U.S. came in second four times, most recently in 1995. If one were to include the returns of Emerging Market companies into this comparison, there are several years that the U.S. does not even make the top 10.

We realize that the last several years have been difficult for investors. We encourage you, however, not to give up on the potential of companies and countries outside of the U.S. to enhance a portfolio's long-term equity returns.

Written by Nancy L. Skeans, CPA, CFP®, Partner/Managing Director, Schneider Downs Wealth Management Advisors, LP.

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SDANNOUNCES

Acquisition continued from Page 2

seller is unincorporated or a shareholder in an S-corporation, the seller will pay tax at the ordinary tax rate (up to 35%) on the portion of the gain related to depreciation recapture on the assets "written up" in the sale, instead of the lower capital gains rate of 15%.

Additionally, if the seller is a C-corporation, the seller will face "double-taxation" on distribution of the proceeds. The C-corporation pays one level of taxes on the proceeds from the sale of assets. Then, when the proceeds of the transaction are distributed from the corporation to the shareholders, the shareholders force another level of tax on the proceeds as either a dividend or as a distribution in liquidation of the corporation.

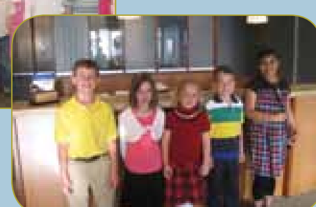
As described above, buyers and sellers generally have conflicting interests as to the best structure for a proposed transaction. In the end, conflicts are often settled by an adjustment to purchase price. Thus, the task of starting and consummating a sale or acquisition is to first identify the tax and non-tax goals of the various parties to the transaction. Then, active planning and tax techniques can be applied to resolve the conflicts and reach a fair and equitable deal for both the buyer and seller.

Schneider Downs Corporate Finance, LP is a registered broker/dealer. Member FINRA/SIPC.

Around Schneider Downs

On May 18, Schneider Downs Corporate Finance, LP presented "Getting Deals Done: New Considerations in the M&A Market" at the Athletic Club of Columbus. Panelists included Don Linzer, Peter Lieberman, Joel Rosenthal and Frank Wisehart. *Pictured l-r: Peter Lieberman, Don Linzer, Matt McKinnon, and Dave Kolan.*

The 2010 MS Walk team braved some chilly weather during the 5K walk around Pittsburgh on Sunday, April 18, but had a very successful fundraising effort. $2,690 was raised for MS Research including $540 collected during a jeans day fundraising event in the Pittsburgh office! Schneider Downs employees participating in the walk included Sue Clark, Mary Richter and Jennifer Cowles (pictured l-r).



On April 23, 2010, Schneider Downs participated in Take Your Daughters and Sons to Work Day®. In Pittsburgh, the theme was "1 Youth, 1 Dream, 2Morrow's Leader." Activities included presentations from shareholders who talked about what they wanted to be when they grew up. They also participated in an activity run by Junior Achievement of Southwestern PA. The Columbus kids' activities included a telephone etiquette activity, a Guess-Who panel, a workshop to create their own personal advertisements and a "defining your dreams" calculator that listed different career paths for each individual.

Oops! *In the last issue, Melanie M. LaSota was incorrectly listed as Senior Manager. Melanie's correct title is Director of Estate and Tax Trust Services.*

CALENDAR - BENEFIT PLAN DUE DATES

Forms 5500, Annual Return/Report of Employee Benefit Plan.

Year-End	Due Date	With 5558 Extension
11/30	6/30/10	9/15/10
12/31	8/2/10	10/15/10
1/31	8/31/10	11/15/10

Processing of corrective distributions relative to failed 401(k) ADP/401(m) ACP discrimination testing, so as to avoid a 10% excise tax imposed on the employer.

Year-End	Due Date
3/31	6/15/10
4/30	7/15/10
5/31	8/16/10

New Hires

Our people are our greatest strength. We welcome our January, February and March new hires:

Danah P. Brust	Brittany J. Lockerman
James R. Buetel	Cynthia M. Lockovich
Marybeth Dalessandro	Ryan R. Miller
Cynthia J. Hoffman	Helen E. Rasmussen

WELCOME

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PROFESSIONAL NEWS

Raymond W. Buehler, Jr., President and CEO, was named World Chair of IGAF Worldwide.

Mary D. Richter, Tax Shareholder, was re-elected to the Board of ACHIEVA Support. She also attended the IGAF Worldwide European Tax Conference in Hamburg, Germany.

Frank A. Wisehart, Business Advisors Director, was nominated to the "Valuation Credentialing Board" for the National Association of Certified Valuation Analysts (NACVA).

Edward R. Friel, Audit Shareholder, attended the AICPA Practitioners Conference in Las Vegas in June.

Donald B. Applegarth, Audit Shareholder, was elected Treasurer of the Sewickley Heights Gun Club.

Joel M. Rosenthal, Business Advisors Shareholder, was elected to the Board of ACG. He was also named Vice President and President Elect for Jewish Family and Children's Services.

John R. Null, Audit Shareholder, presented the topic "Accounting for an Economy in Turmoil" to the Pittsburgh Association for Financial Professional's 2010 Three Rivers Financial Forum in April.

Schneider Downs won a Gold Award and was featured in the United Way's 2009 Campaign Summary for impressive campaign efforts. **Mary Richter** was featured in the campaign as part of the Women's Leadership Committee of the United Way of Allegheny County.

Henry J. Szymanski, Director, Automotive Services Group, was quoted in the April 30 *Pittsburgh Business Times* article, "New Dealership in Pittsburgh's East End Will Sell Mercedes-Benz Trucks."

Charles A. Oshurak, Audit Senior Manager, and **Lauren E. Craig**, Audit Manager, attended NACUBO's Higher Education Accounting Forum in Chicago in April.

John H. Stafford, Technology Shareholder, attended the Microsoft Convergence Conference in Atlanta.

Timothy J. Hammer, Audit Shareholder, **Michael A. Renzelman**, Audit Shareholder, **Jeanne M. Barrett**, Audit Senior Manager, and **Lara E. Fuller**, Audit Senior Manager, attended the AICPA National Employee Benefit Plan Conference in Las Vegas.

Staci L. Brogan, Audit Senior Manager, presented the topic "Nonprofit Accounting and Governance Matters" to the National Business Institute's "How to Keep Tax-Exempt Organizations in Compliance" in May.

Donald R. Owens, Internal Audit and Risk Advisory Services Director, and **Marc D. Brdar**, Internal Audit and Risk Advisory Services Senior Manager, presented "Reducing Fraud Risk by Assessing and Strengthening Internal Controls" at the 2010 Emerging Trends in Fraud Investigation and Prevention Conference in May. Don also presented "Red Flags of Fraud" at the National Business Institute's "Accounting 101 for Attorneys" in Columbus in May.