



Captive Insurance Tax Forum

February 25 – 26, 2019 | Miami, FL

Monday, February 25, 2019

7:30 – 8:00 am	Registration and Breakfast	
8:00 – 8:15 am	Chairperson's Welcome & Overview	<i>Tom Jones, McDermott Will & Emery LLP, Chicago, IL</i>
8:15 – 9:15 am	Review of Business Reasons for Utilizing an Insurance Affiliate <ul style="list-style-type: none"> • Internal risk financing / profit center opportunity • Claims, defense and administrative cost reduction • Access to reinsurance • Employee benefits and terrorism coverage • Global-based risk distribution 	<i>Art Koritzinsky, Marsh USA Inc., Norwalk, CT</i>
9:15 – 9:45 am	Evolution of Federal Taxation of Captives <ul style="list-style-type: none"> • Clash of fundamental tax concepts • 1941 US Supreme Court LeGierse – case • First wave of cases – IRS victories • Second wave of cases – taxpayer victories • IRS limited concessions and safe harbors • Today – the third and fourth wave of cases 	<i>Chaz Lavelle, Bingham Greenebaum Doll LLP, Louisville, KY</i>
9:45 – 10:30 am	Potential Tax Benefits of an Insurance Affiliate <ul style="list-style-type: none"> • Acceleration of risk funding deductions • Premium and insurance reserves deductibility • Unrelated business – types and amounts • Brother / sister risks – structures avoiding risk concentration • Mix of shareholders / insureds • Group captives and risk distribution in cell and series structures • Evaluation of IRS guidance vs. case law definitions 	<i>Saren Goldner, Eversheds Sutherland (US), LLP, New York, NY</i> <i>Kristen Hazel, McDermott Will & Emery LLP, Chicago, IL</i>

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10:30 – 10:45 am	Break for Refreshments	
10:45 – 11:20 am	Onshore Captive Tax and Regulatory Considerations <ul style="list-style-type: none">• Key onshore insurance company tax considerations• Amended loss and unearned premium reserve deductions• Stock, mutual or reciprocal format for optimal tax results• Regulatory concerns and basics of liability risk retention groups	<i>Tom Jones, McDermott Will & Emery LLP, Chicago, IL</i>
11:20 – 12:00 pm	Offshore Captive Tax and Regulatory Considerations <ul style="list-style-type: none">• Subpart F treatment of insurance income• Related person insurance income (RPPI)• Amended passive foreign investment company (PFIC) rules• Avoidance of a US trade or business• Overview of anti-tax haven and foreign account initiatives	<i>Saren Goldner, Eversheds Sutherland (US), LLP, New York, NY</i> <i>Kristen Hazel, McDermott Will & Emery LLP, Chicago, IL</i>
12:00 – 12:10 pm	Focus Point – Making a Foreign Insurer a Domestic Taxpayer <ul style="list-style-type: none">• Why and how to make an IRC §953(d) onshore tax election• Consequent possible election tax costs and its benefits/detriments	<i>Saren Goldner, Eversheds Sutherland (US), LLP, New York, NY</i>
12:15 – 1:30 pm	Luncheon	
1:30 – 2:15 pm	Risk Distribution: Siblings or Strangers or Exposure Units? <ul style="list-style-type: none">• Why a captive wants third party risks – how measured?• Disadvantages of a captive assuming third party risk• “Brother-sister” risk distribution – what types of siblings and risks are counted• Homogeneity of risks – a requisite?• Evolving IRS guidance and enforcement on risk pooling• Distribution among entities versus distribution within an entity	<i>Chaz Lavelle, Bingham Greenebaum Doll LLP, Louisville, KY</i>
2:15 – 3:00 pm	Employee Benefits as Third Party Risk <ul style="list-style-type: none">• ERISA benefits – why insure them in a captive?• Obtaining a DOL prohibited transaction exemption• The “ex pro” option – availability and how to qualify• IRS “look through” rulings / medical stop loss• Non-ERISA opportunities and strategies	<i>P. Bruce Wright, Eversheds Sutherland (US), LLP, New York, NY</i>
3:00 – 3:15 pm	Break for Refreshments	

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3:15 – 3:45 pm	Federal Excise Refreshments <ul style="list-style-type: none">• FET basics• IRS cascading theory and its enforcement aftermath• Industry response, litigation and pending IRS appeal• Varieties of tax treaty protection	<i>P. Bruce Wright,</i> <i>Eversheds Sutherland</i> <i>(US), LLP, New York,</i> <i>NY</i>
3:45 – 4:30 pm	Pools and Other Third Party Risks – What, Where and Why <ul style="list-style-type: none">• Commercial risk exchanging pools• Other sources of third-party risk• Understanding the “risk” in third-party risk	<i>Art Koritzinsky,</i> <i>Marsh USA Inc.,</i> <i>Norwalk, CT</i> <i>Jeremy Huish, Artex</i> <i>Risk Solutions, Inc.,</i> <i>Mesa, AZ</i>
4:30 – 4:45 pm	Focus Point – ILS (Insurance-Linked Securities) / “Cat” (Catastrophe) Bond Market <ul style="list-style-type: none">• What, why, where and how of cat bonds• Comparative overview of ILS tax and regulatory issues versus captive insurance	<i>P. Bruce Wright,</i> <i>Eversheds Sutherland</i> <i>(US), LLP, New York,</i> <i>NY</i>
4:45 – 5:30 pm	Redomiciling of Captive Arrangements <ul style="list-style-type: none">• Business reasons for changing domiciles• Alternative approaches to accomplish redomiciling• Tax and regulatory issues arising from various structures	<i>P. Bruce Wright,</i> <i>Eversheds Sutherland</i> <i>(US), LLP, New York,</i> <i>NY</i>
5:30 – 6:30 pm	Cocktail Reception	

Tuesday, February 26

7:45 – 8:15 am	Breakfast	
8:15 – 8:30 am	Chairperson’s Review of Day One and Preview of Day Two	<i>Tom Jones, McDermott</i> <i>Will & Emery LLP,</i> <i>Chicago, IL</i>
8:30 – 9:45 am	Audience Questions/Impact of Tax Reform on Captives/Captive Owners Plus Discussion of Recent Captive Rulings and Cases <ul style="list-style-type: none">• Panel discussion of audience questions• Statutory changes affecting insurance companies• Discussion of court decisions and other authorities affecting the definition of insurance, risk distribution, risk pooling and insurance risk	<i>P. Bruce Wright,</i> <i>Eversheds Sutherland</i> <i>(US), LLP, New York,</i> <i>NY</i> <i>Dan Kusaila, Crowe</i> <i>LLP, Simsbury, CT</i>

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- The latest on state premium based taxes on captives and their policyholders as well as trend toward state income taxation of captives

Tom Jones, McDermott Will & Emery LLP, Chicago, IL
Chaz Lavelle, Bingham Greenebaum Doll LLP, Louisville, KY
Kristen Hazel, McDermott Will & Emery LLP, Chicago, IL
Saren Goldner, Eversheds Sutherland (US), LLP, New York, NY

9:45 – 10:00 am	Focus Point – Procedural Overview of the IRS Audit Process <ul style="list-style-type: none">• Audit selection, taxpayer representation and preparation Exam, appeals and the courtroom – a long and winding road	<i>Chaz Lavelle, Bingham Greenebaum Doll LLP, Louisville, KY</i>
10:00 – 10:15 am	Break for Refreshments	
10:15 – 11:00 am	State Taxation of Captives <ul style="list-style-type: none">• Premium, income or self-procurement taxes? Or more than one?• How insurance company state taxation rules applied pre-federal NRRA• Effect of federal NRRA “home state” and other provisions preempting state law• The various reactions of states to NRRA• Emerging trend to subject captives to state income tax	<i>P. Bruce Wright, Eversheds Sutherland (US), LLP, New York, NY</i>
11:00 – 11:30 am	Repatriation of Captive Profits <ul style="list-style-type: none">• Dividends• Loan backs• Pledges• Receivables/commercial paper purchases• Guaranties• Impact on desired tax results and regulatory constraints	<i>Tom Jones, McDermott Will & Emery LLP, Chicago, IL</i>
11:30 – 12:15 pm	Sec 831(b) Election and Consequences <ul style="list-style-type: none">• Qualifications to be taxed under Sec 831(b)• Election mechanics and consequences• Implications of IRS Notice 2016-66 & Pending Cases	<i>Chaz Lavelle, Bingham Greenebaum Doll LLP, Louisville, KY</i>

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- Computing investment income
- Practical guidance for small insurance companies

12:15 – 1:15 pm	Luncheon	
1:15 – 2:00 pm	Overview of Cell, Series and Rent-a-Captives <ul style="list-style-type: none">• Structures for cell, series LLC and rent-a-captives• Have courts respected cell walls' segregation of risk?• Analysis of proposed Treasury regulations• Testing for insurance tax treatment – cells must meet usual tests• One taxpayer or many? Factors applying IRS guidance• Preferred stock vs contract rights• Increasingly popular incorporated cells and hybrid cell companies	<i>Tom Jones, McDermott Will & Emery LLP, Chicago, IL</i>
2:00 – 3:00 pm	Basics of Captive Tax Compliance <ul style="list-style-type: none">• Required and optional federal tax filings for offshore captives• “Impact of OECD Common Reporting Standard” (a global FATCA) on foreign captives• Insurance company federal tax filings for domestic captives• Dealing with an IRS captive audit at the field or appeals office levels• Overview of state tax filings	<i>Dan Kusaila, Crowe LLP, Simsbury, CT</i>
3:00 – 3:15 pm	Focus Point – Tax Aspects of Captives Owned by Exempt Organizations <ul style="list-style-type: none">• Common structures for single-parent captives – why offshore is preferred• Group captives with exempt owners – risk retention groups (often reciprocals) vs. “tandem” structures usually with foreign related party reinsurance company	<i>Tom Jones, McDermott Will & Emery LLP, Chicago, IL</i>
3:15 – 3:30 pm	Summary and Q&A Session	
3:30 pm	Seminar Adjourns	
