Tax-exempt hospitals and health systems face a new reality now that the Tax Act has passed. The health system’s long-term commitment to tax-exempt, nonprofit status is now a legitimate strategic issue. In this new environment, the health system board may consider shifting toward a for-profit model.

The general counsel is well suited to lead the internal conversation about conversion strategies. We’ve developed a checklist to help with that process, highlighting various conversion mechanisms and their legal and tax implications.

- **Know Your Options**: A number of options are available to shift to a partially or completely taxable structure, each with unique considerations.

- **Understand the Tax Implications of a Complete Conversion**: Mechanisms for complete conversion include the sale of all assets to a for-profit entity, a drop-down conversion, a merger into a for-profit entity, or a conversion in place if allowed by state law. The historic tax-exempt asset value remains dedicated to charitable purposes.

- **Understand the Tax Implications of a Partial Conversion**: Mechanisms for a partial conversion include contributing certain assets to a taxable subsidiary or a joint venture with a for-profit partner. Potential UBTI and exemption issues must be considered.

- **Understand the Executive Compensation Implications of the Tax Reform Bill**: The Tax Act includes major changes to executive compensation for large exempt organizations, which may adversely impact their ability to compete with for-profit entities for top talent and make for-profit vehicles more attractive.

- **Understand Potential Changes to Benefit Plan Offerings in a Conversion**: Certain benefit plans, including Code Section 403(b) retirement plans or Code Section 457 nonqualified plans, require change if a complete conversion is undertaken.

- **Understand the State Law Aspects of Conversion**: Be prepared for the state attorney general to be involved in a transaction that shifts control of nonprofit assets to for-profit ownership.

- **Think Big Picture**: Boards of directors and executive leadership must be prepared to articulate how the delivery of health care services through a tax-exempt, nonprofit model is distinguishable from the delivery of such services in a proprietary model.

**FOR MORE INFORMATION OR TO SCHEDULE A MEETING**, contact Stephen W. Bernstein at sbernstein@mwe.com.