

Current Status of Issue

The International Hybrid Transactions Tier I Issue has been moved to monitoring status. Issue guidance and support will continue through the LMSB Foreign Merger and Acquisition Technical Advisors. The Foreign Merger and Acquisition Technical Advisors will continue to provide assistance to the field including identification, development of the issue and, if needed, assistance with Revenue Agent Reports.

Issue Owner Executive & TA Contact

Issue Executive Owner - Walter Harris, Director,
Financial Services

The Issue Management Team has stood down. The field should contact the Foreign Mergers & Acquisitions TA for questions related to the issue.

Contacts:

**LMSB PFTG, Foreign Mergers & Acquisitions
Technical Advisor** - Deborah
Childers (202) 283-8078; Deborah.Childers@irs.gov



Tier I (Monitoring Status)



International Hybrid Instruments

Quick Reference Guide

June, 2009

Executing Strategy for Tier I Issues

Audit Teams Should:

- ☐ Establish the issue on IMS using the UIL code per the IDD.
- ☐ Research the issue on the Foreign Mergers & Acquisitions TA website.
- ☐ Consider the issue in the audit planning and risk assessment.
- ☐ Contact the Foreign Merger and Acquisition TA for assistance in identifying and developing the issue, and, if needed, assistance with Revenue Agent Reports.



Tier 1

Issue Owner Executive (IOE)

Walter Harris, Director

Financial Services

Tier I: International Hybrid Instruments Transactions

Issue Description

International Hybrid Transactions involve cross border financing transactions that are treated inconsistently as debt or equity for U.S. and foreign tax purposes. There are two types of transactions: (1) Equity in the U.S. transactions are treated as equity for U.S. tax purposes and debt for foreign tax purposes. (2) Debt in the U.S. transactions are treated as debt for U.S. purposes and equity for foreign tax purposes.

Administrative Codes

UIL Codes:

- * International Hybrid Instruments (Equity in the U.S.) - 385.04-07
- * International Hybrid Instruments (Debt in the U.S.) - 385.04-08

SAIN Codes: 802-03

Tracking/Project Code: 0568

ITA Codes:

- * S100-International Hybrid Instrument Transactions
- * S101-International Hybrid Instruments (Equity in the U.S.)
- * S102-International Hybrid Instrument (Debt in the U.S.)

Industry Director Directives (IDDs)

IDD#1:

This Directive is intended to (i) provide further field direction on a Tier I issue relating to Section 385 abuse and (ii) remind the field that these are mandatory examination issues requiring that any resolution of the issue must be approved by the International Hybrid Instrument Transactions Issue Management Team. The core issue is whether these cross-border financing transactions entered into between related parties should be treated as debt or equity under U.S. federal tax law, including Section 385.

<http://www.irs.gov/businesses/article/0,,id=171462,00.html>

IDD#2:

On May 22, 2009, the Issue Owner Executive issued a new IDD which moves the International Hybrid Transactions Tier I Issue to monitoring status. This Directive provides information on the technical guidance currently available to the field and information on the use of UIL codes. The field is directed to use the Foreign Mergers & Acquisitions Technical Advisor for issue support and guidance. The Foreign Merger and Acquisition Technical Advisors will continue to provide assistance to the field including identification, development of the issue and, if needed, assistance with Revenue Agent Reports.

<http://www.irs.gov/businesses/article/0,,id=208376,00.html>

Appeals Settlement Guidelines (ASGs)

Currently there are no ASGs for this issue.

Administrative & Technical Guidance

Hybrid Transactions - Equity in the US

Below is a **Generic Legal Advice** on equity in the U.S. transactions with memos from the TA and Area Counsel.

General Legal Advice

<http://www.irs.gov/pub/irs-lafa/am2006001.pdf>

Below is a **Chief Counsel Advice** on Accounts Receivable Factoring Equity in the U.S. case.

Chief Counsel Advice

<http://www.irs.gov/pub/irs-wd/0849012.pdf>

Coordinated Issue Paper

Hybrid Transactions - Debt to U.S

Although not a Coordinated Issue Paper, a Position Paper has been developed which is posted on the TA website.

This Position Paper discusses Hybrid Instrument Transactions that are treated as debt for US tax purposes and equity for foreign tax purposes. The Position Paper describes typical transactions, the tax treatment claimed by the taxpayer and potential legal positions. Agents should work closely with local counsel to determine if the facts in a particular case support proposing an adjustment.

Regulations

Finalization of Regulation Section 1503(d); IMT & Chief Counsel analysis to determine impact on overall *hybrid issue*. **Regs Finalized March, 2007**

- * The Equity in the U.S. transaction is addressed in the revised DCL regulations under section 1.1503(d)-3(a)(2) as illustrated in example 12 by disallowing a third party interest expense deduction claimed by a Disregarded Entity and reflected on the U.S. return.

http://www.irs.gov/irb/2007-15_IRB/ar08.html