

## Current Status of Issue

Guidance has been published on the Foreign Mergers & Acquisitions website for Equity in the US transactions. The Audit Teams are instructed to analyze the transaction to determine if it is similar to this guidance. If not similar, the Audit Team will work with the IMT to determine the appropriate disposition.

The IMT has requested guidance for the repurchase agreement with put/call option transaction.

The IMT has requested guidance for the repurchase agreement with a disregarded entity transaction.

The IMT is drafting a request for guidance on a deferred subscription agreement transaction.

## Executing IMT Strategy for Tier I Issues

### Audit Teams Should:

- Establish the Tier I Issue on IMS using the UIL code per the ID Directive.
- Research the issue on the Tier I website.
- Communicate with the IMT early to determine the strategy and any special requirements for the issue.
- Consider the issue in the audit planning and risk assessment in accordance with the IMT strategy.
- Utilize the audit tools and techniques provided by the IMT to develop the issue.
- Resolve the issue using all resolution tools in alignment with the IMT strategy.

## Issue Management Team (IMT)

**Issue Executive Owner** - Walter Harris

**LMSB Counsel Executive**— Roland Barral

**Financial Products Team Manager** – Earnest Griffin

**Appeals Officer, International Specialist** - James Bresnahan

**LMSB Office of Chief Counsel**—Marvis Knospe

**LMSB:F Senior Program Specialist** – Michelle Levitte

### Contacts:

**LMSB PFTG, Technical Advisor** - Deborah Childers (202) 283-8078; [Deborah.Childers@irs.gov](mailto:Deborah.Childers@irs.gov)

### LMSB Issue Counsel:

**LMSB Office of Chief Counsel** – Steve Tillem (917) 421-4640; [Steven.D.Tillem@irscounsel.treas.gov](mailto:Steven.D.Tillem@irscounsel.treas.gov)

**LMSB Office of Chief Counsel** – Stephen Best (860) 290-4077; [Stephen.C.Best@irscounsel.treas.gov](mailto:Stephen.C.Best@irscounsel.treas.gov)



## Tier 1



## Tier I

# International Hybrid Instruments Transactions

## Quick Reference Guide

April, 2008

### 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)

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>

### Appeals Settlement Guidelines (ASGs)

Currently there are no ASGs for this Tier I issue.

### Issue Specialization Team (IST)

An ***Issue Specialization Team*** will be composed to accomplish: {we see these as minimum objectives}

- \* facilitate & accelerate factual development on these transactions
- \* continue development of effective audit tools to assist teams
- \* provide assistance to team in issue development & resolution
- \* identify most significant cases, with potential for designation of litigating vehicle

### 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>

#### Coordinated Issue Paper

#### Hybrid Transactions - Debt to U.S

Although not a Coordinated Issue Paper, the IMT has developed a Position Paper which has been 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. Local Counsel should coordinate with the Issue Management Team Counsel, Steven Tillem, or Stephen Best.

#### 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.