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TEN OFFSHORE MLP FACTS

Offshore MLPs can provide a tax efficient vehicle for investors, but only if structured properly.

A master limited partnership (MLP) is a partnership or limited liability company traded on a stock exchange that generally does not pay federal income tax at the entity level. Some MLPs with assets in non-US jurisdictions are organized as partnerships or limited liability companies but elect to be treated as corporations for US federal income tax purposes. Currently, eight MLPs are treated as corporations for US federal income tax purposes and derive much of their income from offshore assets.

Offshore MLPs differ from other MLPs because of the following characteristics:

1. **Offshore MLPs are typically organized as Marshall Islands limited partnerships or limited liability companies.**
   The Marshall Islands laws governing limited partnerships and limited liabilities companies are substantially similar to the laws of the state of Delaware. In addition, the Marshall Islands does not impose any meaningful entity level tax on these entities.

2. **From a business perspective, offshore MLPs are generally very similar to domestic MLPs in that the offshore MLP's assets typically generate stable cash flows under long-term agreements.**

3. **Offshore MLPs are typically foreign private issuers (FPIs) for purposes of the US securities laws, which means that Offshore MLPs are entitled to certain accommodations.**
   A foreign private issuer is an entity (other than a foreign government) incorporated or organized under the laws of a jurisdiction outside of the US, unless:
   a. More than 50 percent of its outstanding voting securities are directly or indirectly owned or record by US residents, coupled with any of the following:
      i. a majority of the executive officers or directors are US citizens or residents
      ii. more than 50 percent of its assets are located in the US
      iii. its business is administered principally in the US

4. **FPI status may be gained or lost.**
   a. *Newly registered companies*: FPI determination is made as of a date within 30 days prior to the filing of the initial F-1
   b. *Thereafter*: FPI status tested annually at the end of the most recently completed second fiscal quarter

5. **FPIs are accorded several benefits unavailable to domestic issuers:**
   a. Ability to use US generally accepted accounting procedures (GAAP), International Accounting Standards Board International Financial Reporting Standards (IFRS) or local GAAP (but reconciled to US GAAP)
   b. Quarterly reports (*i.e.,* Form 10-Q) are not required
   c. Current reports on Form 8-K are not required; instead, current reports on Form 6-K are furnished
   d. Additional time to file annual reports on Form 20-F (four months vs. 75 days)
   e. Financial information goes stale more slowly
   f. Ability to make confidential submissions
   g. Exempt from proxy rules, Regulation FD and Section 16 (short swing profit rules)
   h. Exempt from limited aspects of Sarbanes-Oxley

6. **An offshore MLP typically elects to be treated as a corporation for US federal income tax purposes.** As a result, income and losses do not flow to the unitholders. Unitholders receive cash distributions that are either dividends or returns of capital. Reporting is on a Form 1099 instead of a Schedule K-1. This reporting regime allows offshore MLPs to enjoy a much wider investor base, as institutional investors may more readily invest in an issuer that reports on Form 1099s. One of the principal US federal income tax concerns when the offshore MLP elects US corporate status is whether the MLP is a passive foreign investment company (PFIC). If so, US holders could face adverse tax consequences.

7. **The election to be treated as a corporation for US federal income tax purposes eliminates the need to satisfy the "qualifying income test."** This test would otherwise require the MLP to ensure that 90 percent of its gross income is "qualifying income" (the most prominent category of qualifying income relates to natural resource activities). This effectively means that an offshore MLP taxed as a corporation could have assets that would not ordinarily be suitable under the applicable U.S. tax rules for an MLP.

8. **The principal non-US tax concern is whether the MLP can receive cash from its non-US operations without incurring significant income tax liabilities and whether the MLP can make distributions to its unitholders without triggering additional withholding taxes.**

9. **Offshore MLPs with a limited number of assets (*e.g.,* vessel-owning companies) need to be prepared for the possibility of being required to file material contracts (*e.g.,* charters) with the SEC as part of the SEC registration process.**

10. **Following an IPO, an offshore MLP must file with the SEC annual reports on Form 20-F and interim reports on Form 6-K.** The Form 20-F must be filed within four months after the end of each fiscal year. Form 6-Ks are required to be promptly furnished to the SEC when the MLP makes material information public in its home country or elsewhere or when an extraordinary event occurs (*i.e.,* a material acquisition).

This article is one of a series that examines the unique characteristics of MLPs. For further information on MLPs, visit the MLP portal on LW.com.

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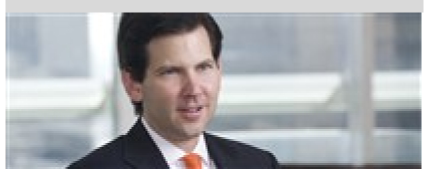

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