

## An Interview with Kaye Scholer's Willys Schneider

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Kaye Scholer Tax Partner Willys Schneider talks to *Law360* about some of the current challenges faced by tax lawyers and their clients, including the new Foreign Account Tax Compliance Act rules and changes to the Internal Revenue Code.

**Q: What is the most interesting or challenging tax problem you've worked on to date?**

A: I have worked on many interesting and challenging tax problems, but one that stands out is a current matter involving a restructuring of US real estate assets held, indirectly, by a non-US sovereign wealth fund. Two similar properties are currently being held as “brother-sister” corporations and the client wishes to combine them, both to achieve enhanced operational efficiencies and to accomplish certain US tax goals. This involves multiple transfers through various jurisdictions, in a fashion that will not trip up the so-called Foreign Investment in Real Property Tax Act (FIRPTA) rules so as to avoid up-front trigger gain recognition.

**Q: Currently, what is a pressing tax concern for your clients, and how are you addressing it?**

A: The new Foreign Account Tax Compliance Act rules are a big concern for many clients. These rules require non-US banks and other non-US entities, such as investment funds, to identify and report US account holders to the IRS in order to avoid imposition of US withholding tax.

Clients are looking to us to explain the requirements and analyze the extent to which various types of non-US entities (including certain non-US government funds and non-US retirement funds) must comply, as well as to recommend the best way for these various entities to do so. FATCA also comes up in loan agreements where we must determine allocation of risk of FATCA withholding tax as between borrowers and lenders.

**Q: What do you anticipate being the biggest regulatory challenge in your practice in the coming year and why?**

A: We are anticipating further changes to the Internal Revenue Code as part of what Congress has been indicating would be a massive overhaul. Learning the new provisions and obtaining an understanding of their impact on our clients is a tremendous challenge.

For example, there has over the past few years been talk about revamping significantly the way in which US tax residents are taxed on off-shore income and a possible move to a “territorial” system that would bring the United States more in line with many other taxing jurisdictions. This could have tremendous impact on many current income tax rules.

On the in-bound side, proposals are pending that would liberalize certain of the FIRPTA rules impacting non-US persons investing in US real estate. These proposals, if enacted, would serve to reduce the US tax burden for such investors.

**Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?**

A: I do a fair amount of work on real estate mortgage investment conduits, which are tax vehicles used to securitize mortgage loans. The seminal treatise on mortgage securitizations, which deals in large part with REMICs, is authored by James Peaslee of Cleary Gottlieb. His book is a mine of information, thoughtful and well written, an invaluable resource. I have also dealt with him in the past on at least one client matter and found him to be very impressive, bright, but unassuming.

## About the Author

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Willys Schneider is a partner in the Tax & Private Clients Department of Kaye Scholer in New York. Her practice is broad-based, covering tax issues relating to mergers and acquisitions; formation and operation of real estate investment trusts, partnerships and limited liability companies; structured finance and securitization; formation of private equity funds; and cross-border transactions. She is a member of the board of the International Tax Institute and frequently participates as a panelist in programs on tax issues.

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