



Connect. Engage. Impact.

CHOOSING A PATH
FORWARD

in a Changed World

COVID-ERA M&A TRANSACTIONS

Speakers

Jason S. Bazar, MAYER BROWN LLP

Devon M. Bodoh, WEIL, GOTSHAL & MANGES LLP

David M. Rievman, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Moderator

Shiukay Hung, TISHMAN SPEYER

Virtual MY21 | #MY21 #TEIVirtualMY21

Disclaimer

- ▶ ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.
- ▶ The views expressed are the personal views of the speakers and not the views of their respective firms or companies or TEI. The information presented is of a general nature. Please consult your own tax advisor.



CHOOSING A PATH FORWARD

in a Changed World

SPEAKER PANEL



Jason S. Bazar
MAYER BROWN
SPEAKER



Devon M. Bodoh
WEIL
SPEAKER



David M. Rievman
SKADDEN
SPEAKER



Shiukay Hung
TISHMAN SPEYER
MODERATOR

Agenda

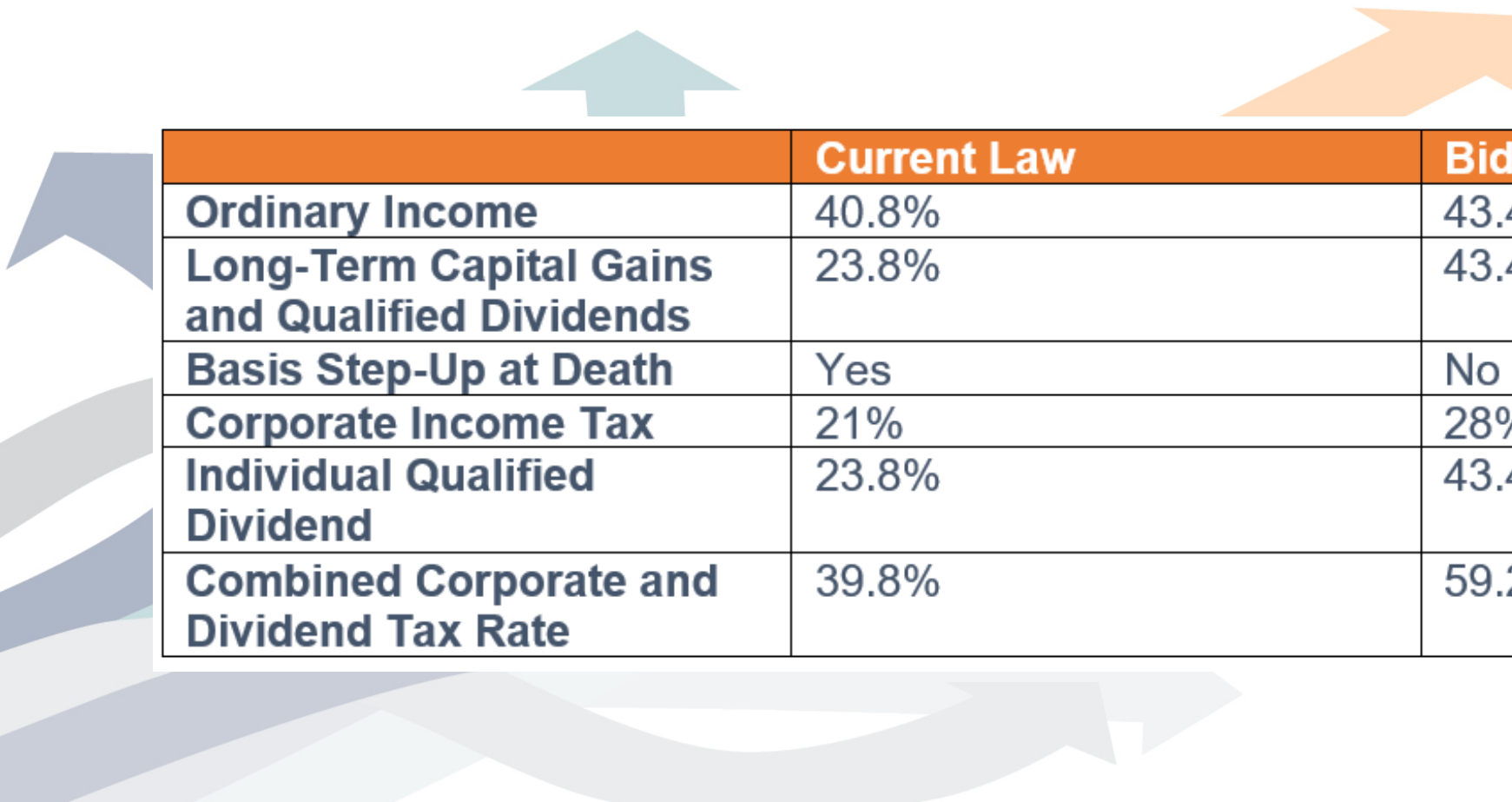
- ▶ Basics of M&A Taxation
 - ▶ Domestic Tax Considerations
 - ▶ International Tax Considerations
 - ▶ Tax Attributes
- ▶ Hypotheticals + Panel Discussion



Basics of M&A Taxation



Biden Tax Plan



	Current Law	Biden Tax Plan
Ordinary Income	40.8%	43.4%
Long-Term Capital Gains and Qualified Dividends	23.8%	43.4% / 39.6%
Basis Step-Up at Death	Yes	No
Corporate Income Tax	21%	28%
Individual Qualified Dividend	23.8%	43.4% / 39.6%
Combined Corporate and Dividend Tax Rate	39.8%	59.2% / 56.5%

Biden Tax Plan

	Current Law	Biden Tax Plan
GILTI Tax Rate	10.5%	21%
FDII Tax Rate	13.125%	17.5 or 26.25?
15% Minimum Tax on Book Income	None	BEAT with no FTC allowed

Domestic Tax Considerations

- ▶ Timing of Transactions
- ▶ Taxable vs. Tax Deferred
- ▶ Double Taxation
- ▶ Basis Step Up
- ▶ Administrative Climate



M&A Structures

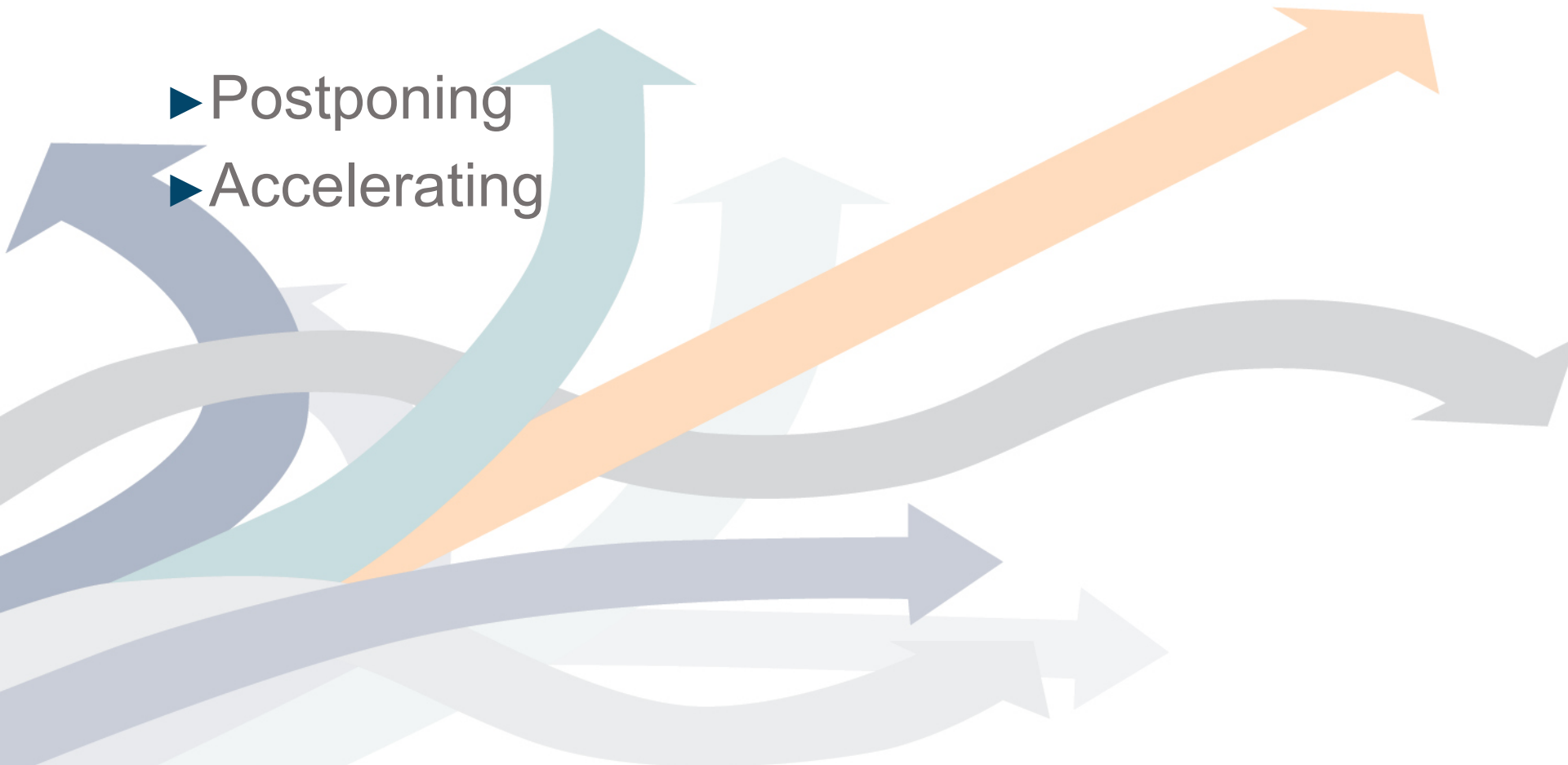
Taxable Stock Purchase	Tax-Free Stock Purchase
Taxable Asset Purchase	Tax-Free Asset Purchase

“a one percentage point decrease in the corporate capital gains tax rate would raise both the number and the total deal value of acquisitions by about 1.1% per year”

Lars P. Feld, et al., *Taxing Away M&A: The Effect of Corporate Capital Gains Taxes on Acquisition Activity*, CENTRE FOR EUROPEAN ECONOMIC RESEARCH (2016)

Polling Question: Are you postponing or accelerating domestic M&A transactions?

- ▶ Postponing
- ▶ Accelerating



International Tax Considerations

- ▶ Anti-Inversion Provisions / Direction of Merger
- ▶ US “Participation” Exemption for Earnings
- ▶ FDII / GILTI + QBAI / BEAT
- ▶ Shrinking FTC
- ▶ Local Country Tax Considerations
- ▶ Treaty Considerations
- ▶ CFC



Polling Question: Are you postponing or accelerating international M&A transactions?


- ▶ Postponing
 - ▶ Accelerating
- 

Tax Attributes

- ▶ Purchase Price Adjustment
- ▶ Open Transaction vs Installment Sale
- ▶ NOLs
- ▶ Basis
- ▶ Transition Tax Risk
- ▶ Tax Receivable Agreement (TRA)
- ▶ Rep and Warranty Insurance
- ▶ Valuation / Uncertain Tax Rate and Environment



Polling Question: How much of a discount would you apply to tax attributes?

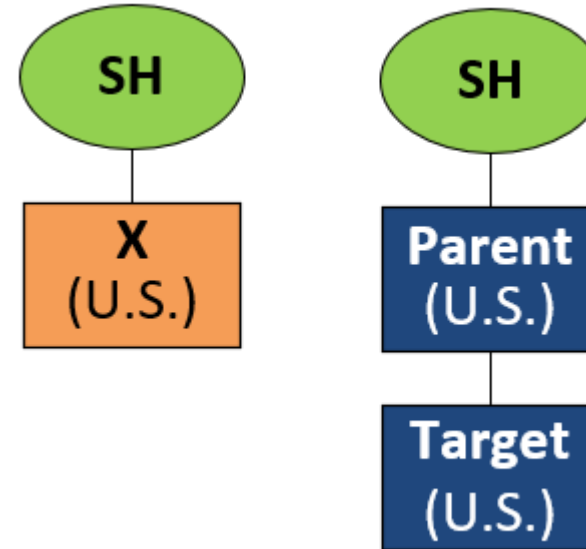
- ▶ 0%
 - ▶ 25%
 - ▶ 50%
 - ▶ 100%
- 

Hypotheticals



Hypothetical #1

- ▶ X and Parent are both publicly traded
- ▶ X is interested in acquiring Target (or its assets)



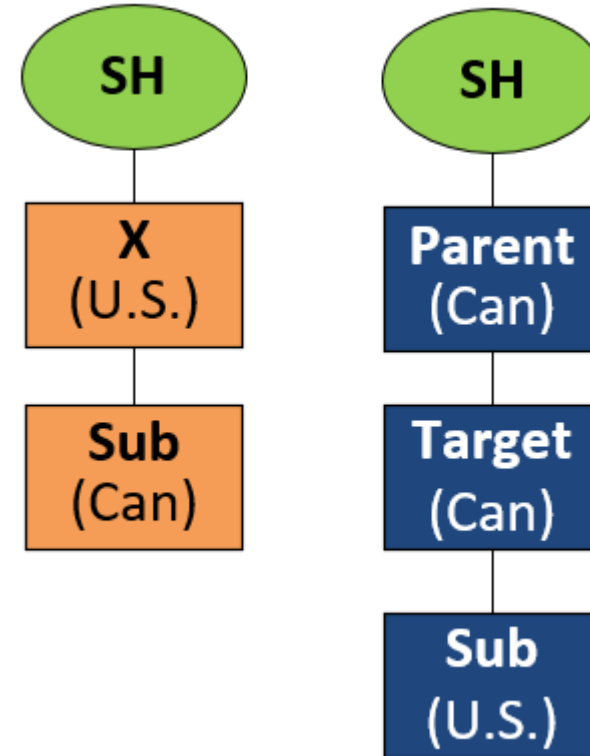
Discussion Questions

- ▶ Taxable versus tax-free transaction?
- ▶ Intentionally trigger built-in gain? Accelerate to lock in today's low rate?
- ▶ Use bonus depreciation or depreciate over time as rate increases over time?
- ▶ Tax attributes?



Hypothetical #2

- ▶ X and Parent are both publicly traded and about the same size and value
- ▶ X is interested in acquiring Target (or its assets)



Discussion Questions

- ▶ U.S. or foreign TopCo?
- ▶ U.S. bidder at a tax disadvantage compared to a non-U.S. bidder?
- ▶ Are international targets less attractive to U.S. bidders?
- ▶ Attributes offset and FTCs?



Thank you!

