NELSON MULLINS

FinTech University:

Tax Implications of Cryptocurrency and Digital Assets

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Summary of Presentation

Current tax law treats convertible virtual currency, such as bitcoin and other cryptocurrencies, as property for federal income tax purposes.

The General Accounting Office explained in a 2014 Report that the term "virtual currency" refers to "a digital representation of value that is not government-issued legal tender." The purpose of this presentation is to summarize the tax implications of owning, buying, selling, and trading virtual currencies and the tax reporting implications of these transactions.

Questions can be submitted and will be answered at the end of the Presentation.

Panel

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History of Cryptocurrency

"*What is needed is an electronic payment system based on cryptographic proof instead of trust, allowing any two willing parties to transact directly with each other without the need for a trusted third party. Transactions that are computationally impractical to reverse would protect sellers from fraud…. The system is secure as long as honest nodes collectively control more CPU power than any cooperating group of attacker nodes.*"

Satoshi Nakamoto 2008

Federal Income Tax Classification of Virtual Currencies

- IRS Notice 2014-21 concludes that convertible virtual currency is treated as property for federal income tax purposes. Bitcoin (BTC) was explicitly identified by the Notice and the IRS FAQs as an example of a convertible virtual currency, and, therefore, it is treated as property for federal income tax purposes. Other convertible currencies include Ethereum (ETH) and Ripple (XRP).

- Convertible virtual currency is described as a virtual currency that has an equivalent value in real currency or that acts as a substitute for real currency. Not all virtual currencies are treated as being convertible.

- The General Accounting Office explained in a 2014 Report that the term "virtual currency" refers to "a digital representation of value that is not government-issued legal tender." Some virtual currencies can only be used within virtual economies and may not be readily exchanged for government-issued currencies such as U.S. dollars, E.U. euros, or Japanese yen.

- Other virtual currencies may be used to purchase goods and services in the real economy and can be converted into government-issued currencies through virtual currency exchanges and are addressed in Notice 2014-21 and the FAQs.

Federal Income Tax Classification of Virtual Currencies

- Notice 2014-21 explains that real currency is "the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance." The Notice further describes virtual currencies as operating in some environments like real currency.

- The IRS noted that virtual currencies were not legal tender in any jurisdiction at the time the Notice was published, and based upon these attributes, there were no virtual currencies that could have generated foreign currency gain or loss. Furthermore, subsequent guidance in the form of updated FAQs issued by the IRS, specifically excluded a virtual currency that is a digital representation of the U.S. dollar or a foreign currency. A virtual currency based on the U.S. dollar could theoretically be treated as "money" rather than property for federal income tax purposes.

- The Commodity Futures Trading Commission has determined that Bitcoin is a commodity, and Bitcoin futures contracts trade on the Chicago Mercantile Exchange. Moreover, the treatment of Bitcoin as a commodity under the Commodity Exchange Act (hereinafter the "CEA"), and for federal income tax purposes, would be compatible with its treatment by the Treasury Department under the Bank Secrecy Act (hereinafter the "BSA") and the views expressed by the Chairman of the Securities and Exchange Commission (the "SEC"). In general, Bitcoin seems likely, though there can be specific exceptions, to be treated as a commodity for federal income tax purposes.

Federal Income Tax Classification of Virtual Currencies – Character of Income, Gain or Loss

- As is the case with other property exchanges, a taxpayer who receives virtual currency as payment for goods or services generally must, in computing gross income, include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received. The basis of virtual currency that a taxpayer receives as payment for goods or services is the fair market value of the virtual currency in U.S. dollars as of the date of receipt.

- Similarly, a taxpayer who exchanges virtual currency for other property or services may have gain or loss on the transaction if the value of the property or services received is different than the basis of the virtual currency in the hands of the purchaser. The character of the gain or loss generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

- A taxpayer realizes capital gain or loss on the sale or exchange of virtual currency that is a capital asset in the hands of the taxpayer. If Bitcoin is held by a taxpayer for one year or less, the gain or loss on disposition will be treated as short-term capital gain or loss. If the Bitcoin is held for more than one year before selling or exchanging it, the gain or loss will be long-term capital gain or loss.

2021 Form 1040 - Reporting of Virtual Currency Transactions

On March 18, 2022, the Internal Revenue Service announced that taxpayers are required to answer a "yes or no" virtual currency question at the top of certain forms.

- The question concerns **all taxpayers who file Form 1040, Form 1040-SR or Form 1040-NR, not just those who transacted virtual currency in 2021**.

- Taxpayers ***who only owned*** virtual currency in 2021 can check "no" if they have not engaged in any transactions involving the currency during the year.

- Taxpayers ***who disposed of any virtual currency that was held as a capital asset through a sale, exchange, or transfer*** must check "yes" and use Form 8949 to figure out their capital gain or loss to report it on Schedule D Capital Gains and Losses.

Trading Safe Harbor - General Rules

- Generally, trading in stock, securities, or commodities may constitute a trade or business for U.S. income tax purposes, and if those activities are carried on in the United States, they typically will generate effectively connected income (ECI) subject to US tax.

- Limited exception: trading safe harbor under Section 864(b)(2)

  - Trade in stock, securities, or commodities and certain derivatives in the United States
  - *For own account*

Cryptocurrency as a “Commodity”

Relevance of Classification as Commodity

- Implications for traders
- Implications for market-makers and dealers
- Implications for hedgers
- Implications for publicly traded partnerships (PTPs)

Definition under Section 475

- "any commodity that is actively traded within the meaning of Section1092(d)(1)"
- Legislative history

Cryptocurrency as a “Commodity” – Reporting by Brokers

- Definition under Section 6045(g)(3)(B)(iii) (pre-Infrastructure Act)
  - Defines as a specified security "any commodity... if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection"
- Treas. Reg. § 1.6045-1(a)(5)
  - "Any type of personal property or any interest therein...the trading of regulated futures contracts in which has been approved by the Commodity Futures Trading Commission"

Cryptocurrency as a “Commodity” – Trading Safe Harbor

- Definition under Section 864(b)(2)(B)(iii)
  - Trading in commodities may qualify for safe harbor "only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place"
- Rev. Rul. 73-158: IRS stated that the "word 'commodities' is used in section 864(b)(2)(B) of the Code in its ordinary financial sense and includes all products that are traded in and listed on commodity exchanges located in the United States" (emphasis added)

Publicly Traded Partnership (“PTP”) Qualifying Income

- Under Section 7704
  - For purposes of “qualifying income,” the legislative history provides that the definition of a commodity is intended to include “typical commodity pools”
- Intersection between IRS's and CFTC's definition of cryptocurrency

Cryptocurrency as a “Security” –Mark to Market Accounting for Dealers

- Definition under Section 475(c)(2)
  - Share of stock, beneficial ownership interests in certain partnerships and trusts, evidence of indebtedness and certain notional principal contracts
  - Evidence of an interest in, or a derivative financial instrument in, any of these items and certain identified hedges of these items
- SEC has treated many tokens and coins offered in “initial coin offerings” as securities

Non-Fungible Tokens

- Defined: an NFT is a unique digital certificate *(i.e.,* token) that is stored on a blockchain
  - May represent a work of art, photograph, or a musical piece
  - It is non-fungible because its metadata cannot be duplicated or replicated
- Application of current IRS guidance to NFTs
- Character of income
  - Investors, traders, dealers and creators
- Tax reporting issues

Utility Tokens

- Defined
  - A “utility token” is a blockchain-based coin or token gives the holder the right to use the coin or token to purchase goods or services from the token issuer; and
  - does not carry debt or equity rights in the issuer
- Not a tax definition
  - “Utility token” is not a tax concept
  - Each asset has to be separately considered based on use in the hands of the holder
- Tax implications
  - Can they be amortizable under Section 197?
  - Can they be treated as ordinary assets under Section 1231?

Classification Implications of the Infrastructure Act

- **Different names for crypto in the United States:**
  - **IRS (2014 - 2021): Virtual Currency**
    - "[A] digital representation of value, other than a representation of the U.S. dollar or a foreign currency ('real currency'), that functions as a unit of account, a store of value, and a medium of exchange"
    - Why the carve-out for crypto linked to fiat (e.g., dollar stablecoins)?
  - **Congress (Infrastructure Act) (2021): Digital assets**
    - "Except as otherwise provided by the Secretary, the term 'digital asset' means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary"
    - This was not a change to Section 7701, so different crypto assets can have different treatment under a particular Code section. Is that a change from prior law?

Trade or Business Relevance

U.S. trade or business for domestic purposes

- Basic definition: engaging in an activity for profit where the taxpayer devotes regular, continuous and significant time to it. *Comm'r v. Groetzinger*, 480 U.S. 23 (1987)
- Ability to deduct losses and business expenses
- Self-employment considerations
- Section 199A qualified business income deduction

U.S. trade or business for inbound purposes

- Common law and IRS guidance: considerable, continuous, and regular
  - 864(b)(2) trading safe harbor
- U.S. income tax treaties: permanent establishment/nexus

- **States and taxation of crypto?**
  - Gains and activity will vary by state

Treatment of Coordinated Activities

- A variety of activities in the crypto ecosystem can exist as coordinated activities
  - Mining
  - Staking
  - Decision making / profiting (decentralized autonomous organizations (“DAO”)
- Are these coordinated activities
  - Trades or business
  - Separate entities
    - (Section 301.7701-1(a)(2); *Luna v. Commissioner*)
- Can a taxpayer’s role be sufficiently passive, so they aren’t trades or businesses?

Cryptocurrencies and US Tax Nexus

- Section 864(b) – Sourcing of Income
  - Term “trade or business within the United States” generally includes the performance of personal services from within the United States
  - Non-U.S. taxpayers however who effect transactions in securities or commodities for their own account are not thereby engaged in a trade or business in the United States.
- Mining and Staking?

Broker Reporting Under the Infrastructure Investment and Jobs Act

- Brokers required to report:
  - Proceeds from taxable sales and exchanges of digital assets;
  - Tax basis and holding period for digital assets sold;
  - Transfers of digital assets to other exchanges;
  - Transfers of digital assets to wallet addresses which are not attributed to other exchanges (e.g., cold storage devices); and
- Businesses to report receipt of more than $10,000 in digital assets in one or more transactions. Presumably, there will be carveouts where other reporting occurs (as is currently the case under Section 60501)
- Proposed regulations expected in the coming month(s)

Infrastructure Act Impact on “Brokers”

- What problem is it trying to solve?
  - Underreporting and unpaid taxes
- What type of "brokers" is it targeted at?
  - CFCs and U.S. payors
  - Exchanges
  - Who else?
- Concerns with tracking of basis and holding periods
- Taxpayer’s choice of an accounting method
- Global considerations and OECD — adoption of a “common reporting standard” for cryptocurrencies

Select Tax Compliance Issues - Tax Lots

- Notice 2014-21 and 2019 FAQs
- Tracking basis in each separate unit of cryptocurrency
  - Specific identification
  - Default method — FIFO
  - Average cost basis method?

Software Tools

- Software tools for crypto can vary in their function
  - Some are focused on calculating taxable income (“off chain” when trading on exchanges).
  - Others are focused on “on-chain” analytics
- Tax authorities tend to license both types from multiple vendors
- Tax software for crypto is where the “rubber meets the road”

Staking

- Proof of Stake Networks (“POS”)
  - Proof-of-stake ("POS") and proof-of-work (“POW”) are the two major consensus mechanisms cryptocurrencies use to verify new transactions, add them to the blockchain, and create new tokens.
  - POW is mining (as done with Bitcoin). This entails using computing power to solve complex mathematical problems.
  - POS entails posting (staking) a certain amount of cryptocurrency in return for the chance to validate transactions on the blockchain and earn rewards.

Mining / Staking Income

- In Notice 2014-21 the IRS announced that “virtual currencies” (as defined) are to be treated as property for tax purposes.
- Q-9 of the Q&A in Notice 2014-21, states that an individual who mines virtual currency “as a trade or business” generates self-employment earnings. Q-8 states that mining rewards are includable in gross income when received at the then fair market value.

Mining / Staking Income

- Most miners treat the mining rewards as ordinary income on the date received at the then FMV.
- Most market participants treat staking rewards in the same manner as mining rewards (note, pending court case: Jarrett v. U.S., Case No. 3:21-cv-00419, which involves the timing of income inclusion).
- Staking via delegation may cause a different tax result.

Staking Tax Issues

For U.S. Investors

- Ordinary income when earned at FMV (Pending *Jarrett v. United States*)
- Valuation and time convention
- Delegated vs Self-Staking

For Non-U.S. Investors

- Delegated staking
  - Is there an agency relationship?
  - What jurisdiction are the node operators based out of?
  - Where does the infrastructure reside?
  - Is staking a significant part of the taxpayer's overall activities?
  - ECI? U.S. source FDAP?
- Self-staking should constitute a trade or business
  - Where does the infrastructure reside?
  - Will the fund stake third-parties' cryptocurrencies in addition to its own?

Jarrett v. United States

- Tezos staking rewards received during 2019. No tokens were sold during 2019
- Limited to timing of income recognition: Upon receipt of reward or at later time of sale of tokens
- Refund case filed by taxpayer in US District Court, Middle District of Tennessee
- Taxpayer asserts staking rewards are taxpayer created property, similar to self-created art or wheat grown by a farmer.
- Notice 2014-21 - proof of work rewards are compensation for services.
- In the interim, Taxpayer received $3,793 refund plus interest for tax year 2019.

Jarrett v. U.S.

- IRS Motion to Dismiss in light of refund issued to Taxpayer:
  - The grant of a refund for one year is neither a prospective nor universal statement of IRS policy about the many individual items reported on a tax return for a given year.
  - Collateral estoppel only available to the taxpayer if the facts, policy, and statute remain the same.

Decentralized Finance (“DeFi”)

- Defi is a catchall term for a group of financial tools built on a blockchain (e.g., Ethereum) and allow users to engage in financial transactions
- Each DeFi protocol is permissionless (i.e., there is no third-party), the protocol runs on “smart contracts” (self-executing computer programs that perform the functions of a traditional contract)
- Each transaction on a DeFi protocol s executed peer-to-peer

DeFi Tax Issues

For U.S. Investors

- Sale on transfer in?
- Rewards = Ordinary income when earned at FMV
- Valuation and time convention
- Are there other methods of taxation?

For Non-U.S. Investors

- Do DeFi rewards cause a U.S. trade or business and ECI?
- Are DeFi rewards U.S. source FDAP?
- What taxation theories could help / hurt?

DeFi Tax Theories

Current Taxation Theories:

- **DeFi Model: Tax in / Tax Out**
  - Treat the transfer of the asset into the DeFi protocol as taxable and then the redemption out of the protocol as taxable as well
  - DeFi rewards are taxable as ordinary income when received at FMV
  - DeFi rewards - ECI / FDAP?
- **No tax in / recognize inside movements**
  - Treat the transfer of the asset into and out of the DeFi protocol as non-taxable
  - Treat the movements inside the protocol (e.g. change in ratio) as taxable events
  - DeFi rewards are taxable as ordinary income when received at FMV
  - DeFi rewards ECI / FDAP?

DeFi Tax Theories (cont'd)

Current Taxation Theories:

- **Joint Venture Deemed Partnership**
  - Many DeFi protocols issue governance tokens allowing "voting power" and rewards consist of a portion of protocol profits (looks like partnership)
  - If a partnership exists, is it a publicly traded partnership? Is there sufficient qualifying income?
  - If treated as a corporation, is that a bad thing?
- **Peer-2-Peer Transaction Model**
  - DeFi protocol is software, all transactions are p-2-p
  - Should taxation be determined at the substantive transaction level?
  - Lending / borrowing / market making / etc. ?
  - Trade or business (what source)?
  - 892 investors? Tax exempt investors?
  - Self-employment? Dealer? Mark-to-market / ordinary?

DeFi and Tax-Exempt Participants

- UBTI is defined as gross income derived from an “unrelated trade or business” regularly carried on, less directly connected deductions
- "Unrelated trade or business" is any trade or business the conduct of which is not substantially related to the exercise or performance of such organization of its exempt purpose
- Unclear whether activities must constitute a trade or business for them to be classified as UBTI
- If an exempt organization is a partner in a partnership, it will include its share of partnership gross income from the unrelated trade or business along with related deductions

Staking / DeFi and Tax-Exempt Participants

Certain items of income are not UBTI pursuant to the Code:

- Dividends and Interest - Section 512(b)(1)
- Royalties - Section 512(b)(2)
- Rents from Real Property — Section 512(b)(3)
- Sales of Property, other than "dealer" sales - Section 512(b)(5)
- Research Income — Section 512(b)(7)
- Despite these exceptions, there are overriding provisions:
- Income from debt-financed property (Section 512(b)(4))
- Specified payments from controlled entities (Section 512(b)(13))

Key Takeaway: If cryptocurrency is properly classified as property, it appears that gains from trading activities should be exempt from UBTI (if the crypto fund not a dealer and amounts are not debt-financed).

Staking / DeFi and Tax-Exempt Participants

Other types of income may be UBTI

- Section 512(b) does not provide exceptions most cryptocurrency activities, including:
  - "Interest" on cryptocurrency loans
  - Staking income
  - Mining income
  - Hard fork income
  - Liquidity pool returns

Current Wash Sale Rule

The wash sale rules disallow losses from so-called "wash sale transactions" involving "stock or securities"

- For this purpose, a wash sale is generally a sale of stock or securities if there is an acquisition or reacquisition event during the 61-day period straddling the date of the sale
- Although the loss is described as being "disallowed" special basis and holding period carryover rules usually result in a temporary deferral

Application to cryptocurrencies

- There is some question as to whether cryptocurrencies are "stock or securities" subject to the wash sale rules
- Most practitioners take the view that mainstream cryptocurrencies are not subject to the wash sale rules

Wash Sale Rule (cont'd)

Application to cryptocurrencies

- No provision explicitly treats cryptocurrencies as securities and IRS guidance has suggested that uniform treatment of an instrument as a security (or non-security) could be persuasive
- Foreign currencies are not securities for purposes of the wash sale rules (but bitcoin as legal tender in El Salvador?). Other currencies might be sufficiently similar to foreign currency to apply this authority by analogy
- Cryptocurrencies are economically similar to commodities and have been classified as commodities by the CFTC. Commodities are not securities for purposes of the wash sale rules
- Gantner, the most recent court decision considering the meaning of the term "security" in the wash sale context, narrowly interpreted the term to include only instruments that Congress had knowledge of when first enacting the statute. This would not include cryptocurrencies
- The IRS has indicated that the potential for tax manipulation is not controlling for purposes of determining whether an instrument is a security
- Caution: the IRS has other weapons against noneconomic losses

Wash Sales: Legislative Developments

The Build Back Better Act would expand the wash sale rules to "digital assets" (among other asset classes)

- The revised wash sale rules would contain exceptions for commodities and foreign currency transactions that are hedging transactions or directly relate to the business needs of the taxpayer
  - No similar exception for digital assets
  - Could cryptocurrencies be characterized as both digital assets and commodities?
  - Note — the wash sale rules do not apply to positions that are marked to market (can you make a mark-to-market election for digital assets?)
- The revised wash sale rules would contain complex related party rules
  - These rules have the potential to result in a permanent loss disallowance, rather than a temporary loss deferral

Current Constructive Sale Rule

- If there is a constructive sale of an appreciated financial position (AFP), a taxpayer must recognize gain (but not loss) as if the position were sold, assigned, or otherwise terminated at fair market value on the date of the constructive sale
  - The basis of the AFP is increased by any gain realized on the constructive sale
  - A new holding period begins for the position on the date of the constructive sale

Definition of an AFP:

- Includes appreciated positions with respect to stock, certain debt instruments, and partnership interests
  - Exceptions for "vanilla debt," hedges of vanilla debt, and positions that are marked to market
- <u>The definition of an AFP does not currently encompass cryptocurrencies</u>

Current Constructive Sale Rule (cont'd)

- Transactions that result in a constructive sale:
  - A short sale of the same or substantially identical property
  - An offsetting Notional Principal Contract (NPC) (e.g., a total return swap) with respect to the same or substantially identical property
  - A futures or forward contract to deliver the same or substantially identical property
    - The definition of forward contract for these purposes excludes many variable prepaid forward contracts
  - With respect to an appreciated short sale, NPC, or forward/futures contract, the acquisition of the same or substantially identical property
    - The Build Back Better Act would expand the scope of this position to also cover contracts to acquire the same or substantially identical property
  - To the extent prescribed in regulations, 1 or more transactions that have substantially the same effect as one of the above transactions

BBBA: Constructive Sales

The Build Back Better Act would expand the constructive sale rules to include "digital assets"

- Cryptocurrency would be a type of asset that could be an "appreciated financial position"
- Note - the constructive sale rules do not apply to positions that are marked to market
- Digital assets are defined as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary."

Moderator Biography

RICHARD B. LEVIN

Richard is a partner in Nelson Mullins Riley & Scarborough's Denver and Washington D.C. offices where he is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATSs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, the Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom.

His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems.

Before joining Nelson Mullins, Richard was the chair and founder of the Chambers-rated FinTech and Regulation Practice of another leading U.S. law firm. The team he built was recognized by Chambers in the FinTech Legal in the USA category and in the FinTech Legal: Blockchain & Cryptocurrencies category. The team was recognized for its FinTech, blockchain, and cryptocurrency knowledge and as a leading firm on FinTech matters.

Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.

Presenter Biographies

WELLS HALL, III

Wells Hall is a partner in Nelson Mullins Riley & Scarborough's Charlotte and Charleston offices where he advises clients on the federal, state and multi-state tax aspects of mergers, acquisitions, reorganizations, structuring of business entities, private equity transactions, pass-through entities, estate investment trusts (REITs), and estate and gift tax planning in connection with such transactions. He represents taxpayers before the Internal Revenue Service and Tax Commissions of various states in individual and corporate tax audits and appeals. Wells participated in the preparation of comments by the ABA Section of Taxation on the proposed Treasury Regulations under Section 199A (qualified business income deduction) and Section 1411 (net investment income tax). He is one of the original drafters of the North Carolina S Corporation Income Tax Act, and the Model S Corporation Income Tax Act endorsed by the American Bar Association and the Multi-State Tax Commission. He was a member of the drafting committee for the original enactment and subsequent revision of the North Carolina Limited Liability Company Act. Wells is currently Chair Elect of the ABA Section of Taxation and the Past President of the American College of Tax Counsel and a former Regent. He has served as Vice Chair - Pro Bono and Outreach of the ABA Section of Taxation, a former Member of Council, and former Chair of the S Corporation Committee of the Section. He is a former Chair of the North Carolina Bar Association Section of Taxation and a former Regent and North Carolina State Chair of the American College of Trust & Estate Counsel. Wells is a frequent speaker at the NYU Institute on Federal Taxation and the NYU Summer Institute on Wealth Taxation, the Southern Federal Tax Institute, the UNC J. Nelson Young Tax Institute, the Tulane Tax Institute, and other national and regional tax programs. He has been a contributor to numerous tax periodicals. Wells received his B.S. from North Carolina State University and his J.D. from Duke University School of Law.

Presenter Biographies

DREW HERMILLER

Drew Hermiller is an associate in Nelson Mullins Riley & Scarborough's Charleston office where he practices with the tax and benefits group and has experience counseling clients on complex domestic and cross border transactional tax matters, including all manner of taxable and tax–free mergers and acquisitions, partnership taxation, REIT taxation, debt and equity financing, audit defense, and tax reporting. Additionally, he counsels clients on the structuring mechanics and statutory requirements of investment in Qualified Opportunity Funds.