



Dbriefs U presents:

Tax Research — Laying the Foundation

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Agenda

What is tax research

Five steps to tax research

Tax research resources and tools

Tax research is...

The process of finding a competent and professional conclusion to a tax problem.



Examples

- Can parents of a college student claim the student as a dependent?
- When would a company that pays new hires a signing bonus deduct the bonus?
- Do student athletes have to pay taxes for free shoes received in exchange for advertising?
- Are there tax consequences to student loans?
- Are gifts received from grandparents considered taxable income?
- Is a trip won as a door prize taxable?

Types of tax research

- Tax compliance (after-the-fact)
 - Facts are already established
 - Objective is to find the proper solution based on the established facts
- Tax planning (before-the-fact)
 - Facts are not yet established
 - Objective is to find the proper set of facts to achieve the desired business and tax outcomes

Why is tax research important?

- It is the foundation of tax
- It has a significant impact on taxpayers; an improper conclusion can be costly for:
 - Taxpayers and
 - Advisers

Steps to tax research

- Determine the critical facts
- Identify the issues or questions
- Search for and validate the appropriate authority using the appropriate tax tools and resources
- Analyze and apply the relevant authority
- Communicate results

Step 1: Determine the critical facts

- Identify the initial facts: who, what, when, why, where and how
- Request missing information
- Determine what is relevant
- Begin to identify the tax issues
- Begin to assess what authorities may apply

A change in the facts can and often will change your conclusion(s)

Exercise — Determine the critical facts

What are the critical facts in the following transaction?

In December, Hayley sold 1,000 shares of stock for \$10,000 to her brother. She had purchased the stock five years ago for \$15,000. Is she able to deduct the loss?

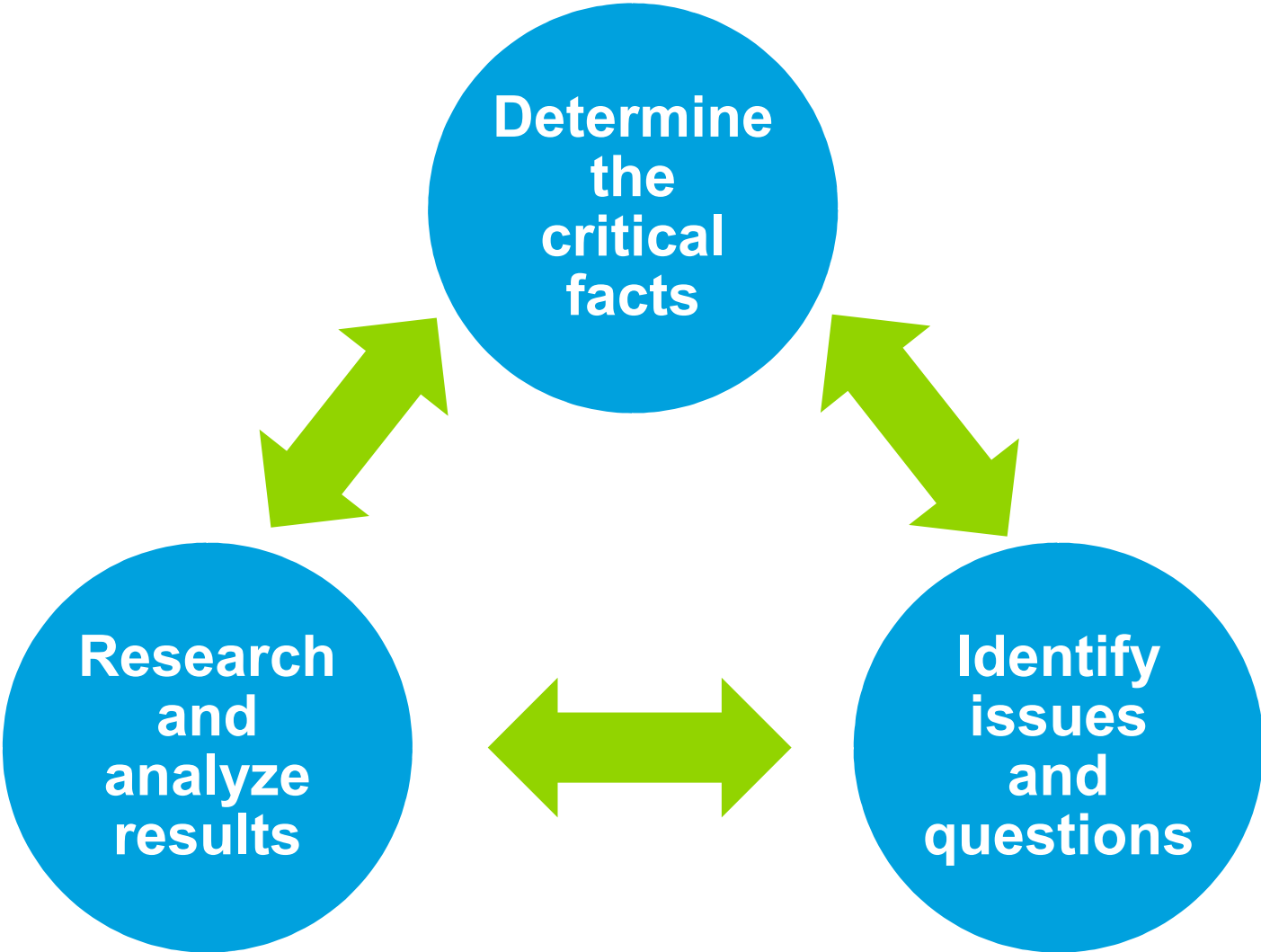
Poll question #1

Lexi reported to her tax advisor that she received a check and inquired as to if she needed to include it in her gross income.

Which question below would her tax advisor “not” need to ask?

- What was the amount of the check?
- Who was the check from?
- What was the check for?
- Did she cash the check?
- Her advisor should ask all of these questions.

Step 2: Identify the issues and questions



Examples of common issues

- Is this a tax-free transaction?
- Does this transaction generate income NOW or in the future?
- What is the nature/type of income, e.g., capital gains, ordinary income, etc.?
- What is the basis of the property?
- Does this transaction create a deduction? What type? Is there a limit? When?
- Is a credit available?

Exercise — Identify the issues and questions

What are the critical issues in the following transactions?

Facts:

- Company X gives a laptop to Company Y
- In exchange, Company Y gives Company X a printer
- Both pieces of equipment are part of the same general asset class

Step 3: Search for and validate authority

- Identify authority that applies to identified facts and circumstances
- Validate the relevant authority identified is current
- Determine whether additional research is needed based on validation
- Distinguish between primary v. secondary sources
 - Primary sources: Authoritative, carry the weight of the law (to a greater or lesser extent); can be unclear and open to interpretation
 - Secondary sources: Sources of information that do not carry the weight of actual authority, yet provide useful tax information; helpful for clarifying highly complex tax rules

Foundation of tax research: 3 branches of government

Executive

(President, VP, Cabinet, and Agencies)

Executes and Enforces the Laws

Legislative — Congress

(House of representatives and Senate)

Makes the Laws

Judicial

(Judges and Courts)

Applies and Interprets the Laws

Foundation of tax research: Treasury and IRS

Executive

(President, VP, Cabinet (including Secretary of the Treasury), and Agencies)

Executes and Enforces the Laws

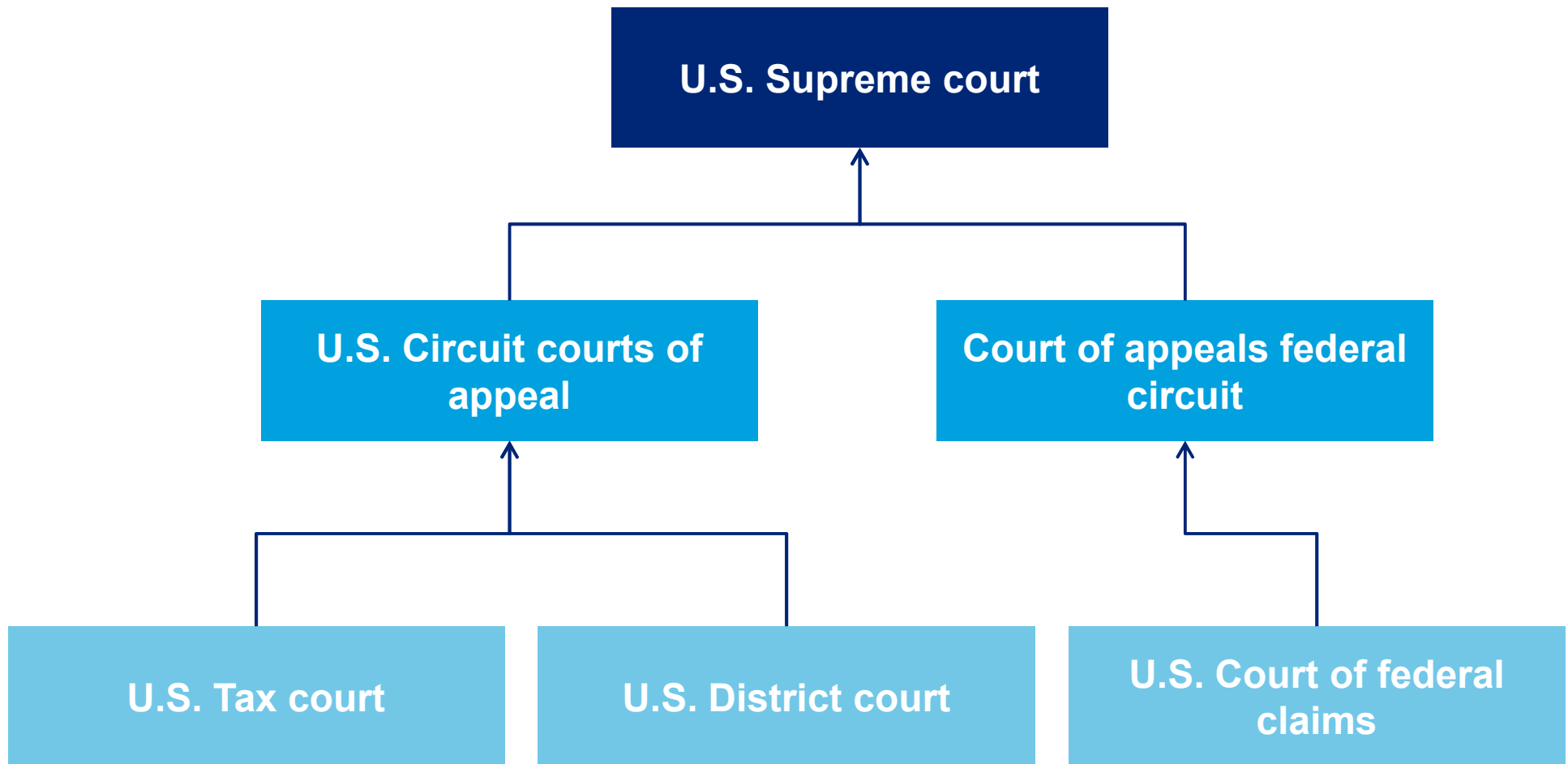
- Regulations (in partnership with IRS) interpreting statute
- Tax treaties (negotiated with other countries)

Treasury department writes regulations that interpret statute

IRS administers the tax law

- Regulations (in partnership with Treasury)
- Rev Ruls
- Rev Procs
- PLRs
- TAMs
- FSA/CCA/ILM
- Forms and Instructions
- Exam related documents

Foundation of tax research: Judicial branch



“Authoritative” authorities

Statutes

- Internal Revenue Code (Title 26, United States Code)
 - “Off-Code” provisions
 - Legislative history
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Treaties

- Tax treaties and protocols
 - Non-tax agreements (social security totalization agreements; friendship, commerce, and navigation treaties; status of forces agreements)
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Court decisions

- U.S. — Supreme court, courts of appeal, district courts, court of federal claims, tax court
 - Other courts
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Regulations

- Final regulations
- Temporary regulations
- *NOT* proposed regulations

Less/non-“authoritative” authorities

- Revenue rulings (binding on IRS according to some courts)
- IRS notices (sometimes have authority of revenue rulings)
- Revenue procedures
- Proposed treasury regulations
- Tax court memorandum decisions
- Regulation preambles (to all sorts of regulations)
- Informal IRS guidance
 - Private letter rulings, technical advice memoranda
 - Lesser informal guidance (GCM, ILM, CCA, FAA, GLAM)
 - IRS forms/instructions
 - LMSB directives

Poll question #2

Which of the following is a primary source?

- IRC section 61
- Journal of taxation
- CCH standard federal tax reporter
- IRS practice and procedure

Why is validating authority important?

- Case law is dynamic and cases may be appealed or overturned
- The IRC is constantly changing
- Revenue rulings and other administrative authority may be revoked or modified by subsequent administrative pronouncements

Step 4: Analyze and apply relevant authority

- Review information obtained
- Evaluate precedence and legal authority
- Evaluate application to facts and circumstances
- Determine whether or not the taxpayer's facts are similar enough for the authority retrieved to be reasonably applied (Rev. Rulings, PLRs, etc.)

Potential challenges when applying authority

- The law is clear — the facts are uncertain
- The facts are clear — the law is questionable
 - conflicting statutes
 - conflict between a statute and its intent (i.e., legislative history), and conflicting interpretations
- The facts are clear — the law is incomplete

Step 5: Communicate the results

- Oral
- Written
 - Informal “day-to-day” communications (e-mails, etc.)
 - Notes to the tax files
 - Tax research memorandums
 - Responses to IRS inquiries (IDRs, 21 and 45 day letters)
 - Appeal/protest letters
 - Formal opinion letters

The tax research memorandum



Common components of conclusion

- Summary of research performed
- Tax advice
- Recommend action(s)
- Partial conclusion with identification of additional information needed
- Range of alternatives

Citing tax authority

- Documentation is a very important part of communicating tax research and all statements or opinions should be substantiated with supporting cites
- Supporting cites should be to primary sources only except in rare or unusual situations

Sample citation formats

- Code: I.R.C. § 302(a)(2)(C)
- Regs: Treas. Reg. § 1.302-1(a)(2)(C)
- Revenue Ruling: Rev. Rul. 2006-78
- Revenue Procedure: Rev. Proc. 2002-12
- Letter Ruling/TAM: PLR 199943574/TAM 199943574
- Gen Counsel Memo: GCM 54245 (May 1, 2006)
- House Rpt: H.R. Rep. No. 73-704 (1934)
- Senate Rpt: S. Rep. No. 109-21 (2006)
- Smith v. Commissioner, 43 T.C. 121 (1996)

Common tax research resources

Content aggregators and case law

- LexisNexis
- Westlaw

Interpretive material

- CCH
- RIA

In-depth portfolios and analysis

- BNA
- WG&L

News services

What about internet research?



Poll question #3

What resource might you consult if you wanted to understand more about IRC Section 1031?

- LexisNexis
- WestLaw
- CCH
- RIA
- BNA
- All of the above

Poll answer #3

What resource might you consult if you wanted to understand more about IRC Section 1031?

- LexisNexis
- WestLaw
- CCH
- RIA
- BNA
- **All of the above**

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Recorded on December 20, 2010

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