The M&A Tax Report

OCTOBER 2017 VOLUME 26, NUMBER 3

The Monthly Review of Taxes, Trends & Techniques

CEO's Cryptic Email Triggers Sale of Wrong Company, Big Tax Bill; *Danielson* Bars Relief

By Donald P. Board • Wood LLP

Back when corporate A-listers were proudly showing off their new personal digital assistants, THE NEW YORK TIMES reported on a study of how people interacted in a "New Economy" firm. A professor of management had spent a year embedded at a tech company in California, attending countless meetings and analyzing 30,000 in-house emails. [*See* Bruce Headlam, *The Way We Live Now: How to E-Mail Like a C.E.O.*, THE NEW YORK TIMES (Apr. 8, 2001).]

The company boasted a "flat" organizational structure with a minimum of formal distinctions between managers and staff employees. Projects were voluntary and executed by self-forming teams. Yet, despite the company's egalitarian ethos, the professor could pick out employees' positions in the actual corporate hierarchy just by looking at their emailing styles.

Nobody was surprised to hear that senior managers were the slowest to respond to emails. They had, after all, long been known as the slowest to return phone calls. The fact that they tended to send "short, curt" emails was no shocker either. What caught the public's attention was the news that top executives had "the poorest spelling and worst grammar." [*Id.*]

Not much has changed. In 2014, another TIMES contributor wrote an article, widely cited on the Internet, in which he touted the career-enhancing possibilities of "strategic sloppiness." [*See* Kevin Roose, *How Spelling Mistakes and Bad E-mail Etiquette Can Help You Get Ahead*, LINKEDIN (Jan. 8, 2014).]

Cryptic and garbled emails may be the keys to the C-suite, but there are still times when even the busiest managers should mind their electronic p's and q's. Suppose you're a CEO negotiating the sale of a member of your corporate group. On a conference call with the would-be buyer, you propose to rejigger the acquisition structure to produce a better tax result for your investors. It's a departure from the term sheet, but the buyer seems amenable.

The next day, you get an email from the buyer's attorney. She wants to start drafting the acquisition agreement, but the buyer is no longer sure exactly which company's stock it is buying—please clarify. You may want to invest an extra 30 seconds to make sure your reply can be read only one way.

The CEO in *MakRic Enterprises, Inc.* [111 TCM 1183, Dec. 60,549(M), TC Memo. 2016-44 (2016), *aff'd per curiam*, CA-5, 119 AFTR2d 2017-1273] pressed "send" too soon. His Delphic response to the buyer's inquiry about their $16.5 million deal led to the sale of a corporate *subsidiary* instead of its *parent*. The mix-up ultimately cost the parent $3.4 million in unnecessary corporate tax and penalties.

That's got to hurt. But *MakRic* is more than a study in the perils of modern corporate miscommunication. The case also illustrates how hard it can be, under the infamous *Danielson* rule, for a taxpayer to escape the consequences of even blatant errors in the structuring and documentation of an M&A transaction.

The M&A Tax Report

The Monthly Review of Taxes, Trends & Techniques

EDITOR-IN-CHIEF
Robert W. Wood

MANAGING EDITOR
Michael Henaghan

COORDINATING EDITOR
Raghavendra Kaup

THE M&A TAX REPORT (ISSN 1085-3693) is published monthly by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, Illinois 60015. Subscription inquiries should be directed to 2700 Lake Cook Road, Riverwoods, IL 60015. Telephone: (800) 449-8114. Fax: (773) 866-3895. Email: cust_serv@cch.com.

When MakRic Met Alpha

In 1996, Mark Kisner and Rickey Williams decided to buy Alpha Circuits, Inc. ("Alpha"), a contract manufacturer in the electronics business. Mr. Kisner and Mr. Williams expected Alpha to be the first of a series of acquisitions. So, instead of buying the stock personally, they organized MakRic Enterprises, Inc. ("MakRic"), as a holding company to purchase Alpha's shares.

In the years that followed, the founders found themselves fully occupied with Alpha's business. As a result, MakRic never acquired any additional subsidiaries. That left the holding company without any real purpose—unless you count hinting at the shareholders' names ("Mark" and "Rickey").

But MakRic wasn't doing any harm just sitting at the top of the org chart. So, Mr. Kisner and Mr. Williams left the structure in place. They each owned 50 percent of MakRic, which owned 100 percent of Alpha. At tax time, MakRic filed a consolidated return as the parent of the little MakRic-Alpha group.

MakRic and Alpha had parallel management structures. Mr. Kisner served as the CEO of both companies, and Mr. Williams was their president. The two men were on both boards of directors. Since MakRic didn't do anything except own the Alpha shares, the corporate housekeeping was kept to a minimum.

In 2004, Mr. Williams sold half his 50-percent stake in MakRic to James Wilson, who became a director of both companies. While they were at it, Messrs. Kisner, Williams and Wilson (the "Shareholders") entered into an agreement for the future sale of the business. On the third anniversary of Mr. Wilson's purchase of shares, MakRic and the Shareholders were obligated to hire an investment banker to arrange a sale of MakRic or its assets.

Dissolve Then Sell

Three years later, the Shareholders began the process of selling MakRic's only asset, the Alpha shares. On July 11, 2007, they adopted a written resolution (as the directors of Alpha) to retain an investment banking firm ("Gulf Star") to represent the Shareholders and Alpha in the sale of its shares.

One might have expected Gulf Star to represent MakRic, which owned the Alpha stock. But the Shareholders told Gulf Start that they were going to eliminate MakRic and sell the Alpha shares themselves. Gulf Star prepared a sales memorandum informing prospective buyers that MakRic was the current owner of Alpha, but that the parent was in the process of being dissolved.

On February 6, 2008, Southfield Capital Advisors, a private-equity firm, submitted a letter of intent. The PE firm said it was interested in having one of its affiliates, TS3 Technology, Inc. ("TS3"), purchase Alpha from the Shareholders for $16.5 million in cash. There was no mention of MakRic.

Mr. Kisner signed the letter of intent as Alpha's CEO. The Shareholders signed the LOI as shareholders of Alpha, although they *still* didn't own the Alpha stock. A law firm was retained to represent Alpha and the Shareholders in the sale.

On February 22, TS3's lawyers circulated the first draft of a stock purchase agreement. As expected, the draft provided that the Shareholders would sell the Alpha shares. Two more drafts were prepared with the same structure.

Second Thoughts About Tax

Meanwhile, the Shareholders had become concerned that the transaction might not allow them to report long-term capital gain. An accounting advisor had warned the Shareholders that their *holding periods* in their MakRic shares might not "tack" onto the Alpha shares they would receive if MakRic were dissolved. In that case, their sale of the newly received Alpha shares to TS3 would generate *short-term* capital gain.

The Shareholders were indeed facing short-term capital gain or loss if they sold their new Alpha shares following the planned dissolution. But this was largely beside the point. The Shareholders' real problem was that the planned dissolution would have been fully taxable to MakRic.

Under Code Sec. 336(a), the holding company would have been treated as if it had sold the Alpha shares for their fair market value ($16.5 million). The resulting gain ($8.1 million) would have triggered $2.8 million in corporate-level tax. That would have meant $2.8 million less value available for distribution to the Shareholders.

The distribution of Alpha shares would also have been taxable to the Shareholders as an exchange of their MakRic stock. [Code Sec. 331(a).] They had held their MakRic shares for years, so this would have long-term capital gain.

The Shareholders' holding period in their new Alpha shares would have started on the date of the distribution. So, as their adviser had warned, they would have had *short-term* gain or loss when they sold the sale to TS3. However, the point was moot. The Shareholders would have taken a stepped-up basis in the Alpha shares [Code Sec. 334(a)], so there would be no further gain or loss to report.

Deal Structure Revisited

The Shareholders may have misunderstood their actual tax problem(s), but at least they knew that they should not dissolve MakRic. Their solution was to sell their MakRic shares instead. TS3 would acquire Alpha, but as a second-tier subsidiary.

Alpha's CEO orally proposed the new structure to TS3 in a meeting and on a conference call. TS3 did not raise any objection. However, a few days later (February 28), TS3's outside deal lawyer sent the CEO an email:

> In the presentation we received, it indicated that MakRic was going to be dissolved so that the three shareholders of MakRic would then own Alpha Circuits in the same manner that they owned MakRic. Is that still going to occur or is MakRic going to be the seller of Alpha Circuits?

The "presentation" was Gulf Star's sale memorandum, which had said that Alpha would be sold after the dissolution of MakRic. TS3's attorney had been informed that the CEO had said that the dissolution was off. But the attorney was checking to be sure.

However, the attorney clearly did *not* know that the Shareholders now wanted to sell MakRic. He assumed that his client would still be purchasing the Alpha shares. He was just asking whether it would MakRic or the Shareholders who would be selling them.

This was the CEO's big moment. He responded as follows:

> MakRic didn't get dissolved. The purchase will be MakRic which owns 100% of Alpha's shares.

Readers already know that the CEO wanted to have the Shareholders sell MakRic, so his message may not be hard to interpret. But what would they have made of his email if they had been in the same position as TS3's lawyer?

What does "the purchase will be MakRic" mean? If we try to rephrase the CEO's cryptic communiqué so that it makes grammatical sense, its ambiguity is soon apparent.

The simplest hypothesis might be that the CEO just omitted the "r" at the end of "purchaser." TS3's attorney could have ruled that out, however. After all, MakRic already owned Alpha, so saying that "the purchaser will be MakRic" would have made no sense.

Had the busy CEO simply dropped a preposition? If he had meant that TS3 would be buying MakRic stock from the Shareholders, he could have written "the purchase will be *of* MakRic." Not a model of style, but the point would literally have been made that MakRic was the company being acquired.

But TS3's attorney could just as plausibly have concluded that the CEO had dropped a *different* preposition. If the CEO had wanted to reply that MakRic was going to sell Alpha, he could have written "MakRic didn't get dissolved. The purchase will be *from* MakRic."

The only thing that is clear about "the purchase will be MakRic" is its complete ambiguity. But statements that are ambiguous when read in isolation often make perfect sense if considered in their conversational context. Here, the CEO was responding to a specific inquiry from TS3's attorney.

The attorney assumed that somebody was going to sell the Alpha shares. Were the Shareholders going to dissolve MakRic and sell Alpha themselves? Or were they going to let MakRic do the sale?

The CEO's response began by saying that "MakRic didn't get dissolved." Given the tenor of the attorney's questions, this would have invited him to conclude that MakRic would live on and sell Alpha. The CEO's next statement ("the purchase will be MakRic") did nothing to set the record straight.

It would not have been difficult for the CEO to respond in a way that would have gotten the deal on the right track. He might simply have written:

> MakRic didn't get dissolved. TS3 will purchase MakRic which owns 100% of Alpha's shares.

That is just as concise as the email the CEO actually sent, but it includes the necessary information about who was supposed to sell what. TS3 might have been surprised by the news, but it would definitely have gotten the message.

Divergent Documentation

A few days after the email exchange, TS3 circulated a revised stock purchase agreement. Plainly, there had been a breakdown in communication. The new draft said nothing about the Shareholders selling MakRic, but it was full of not-so-subtle hints that MakRic was selling the Alpha shares:

- MakRic was identified as the "Seller."
- The Shareholders were identified as the "Owners," because they owned the Seller.
- The recitals and the operative provisions made it clear that the Seller (MakRic) was selling all the shares of the Company (Alpha) to the Buyer (TS3).

The revised stock purchase agreement made perfect sense, but it simply did not reflect the Shareholders' plan to sell their shares of MakRic. Such disconnects are unusual in M&A, but they do happen. They rarely last for long.

Normally, the other side would read the new draft, gasp in disbelief, and fire off an email demanding to know what was going on. The misunderstanding would be quickly identified and corrected. A revised draft would be in everybody's in-box the next morning, if not the same day.

But not this time. The Shareholders and their advisors did not raise any objection to the revised draft. Nor did they object to any of the *12 succeeding drafts* with the same structure that were circulated over the next seven months.

The Deal Closes

The transaction closed on September 30, 2008. MakRic, TS3, and the Shareholders executed the final version of the stock purchase agreement. Like the drafts that had preceded it, the final agreement documented MakRic's sale of Alpha, not the Shareholder's sale of MakRic.

The Shareholders, acting in various capacities, also signed the usual panoply of votes, resolutions and consents necessary to cause MakRic to sell its Alpha shares to TS3. For example, each of the Shareholders executed a "Joint Written Consent of the Shareholders and Directors in Lieu of a Special Meeting" expressly approving MakRic's sale of its Alpha stock to TS3. The Joint Written Consent, like the stock purchase agreement, included recitals that laid everything out in detail.

Obviously, if the Shareholders had read and understood what they were signing, they would have realized that they were not selling their MakRic shares. But a closing is not a library. The participants are rarely able to focus on the reams of documents pushed in front of them for signature.

Okay, but what about the 12 preceding drafts? The Shareholders maintained that they had not reviewed those drafts closely. The CEO claimed that he simply *had not noticed* that the documents called for MakRic to sell Alpha.

At the closing, TS3 wired the $16.5 million purchase price to bank accounts designated by MakRic. After the IRS assessed a deficiency (more on that below), the Tax Court did not know *who* owned the accounts. But the court observed that a portion of the consideration had found its way into the hands of the Shareholders, although the record did not disclose exactly how.

If the Shareholders received their cash simultaneously with the closing, it is conceivable that they thought they were being paid for selling their MakRic shares. If, on the other hand, the Shareholders directed a distribution of proceeds from a MakRic account *after* the closing, they probably would have realized that MakRic had not been sold.

There were arguably other clues that the transaction had gone awry. For example, TS3 required the Shareholders to resign from the board of directors of Alpha, its new subsidiary. TS3 would have had no reason (or right) to ask the Shareholders to resign as directors of MakRic.

But if the Shareholders believed they were selling MakRic, they would have *expected* to resign from MakRic's board. TS3's failure to procure their resignations would have seemed odd—at least if the Shareholders had noticed it.

Reporting Positions

On January 27, 2009, Gulf Star sent an email to MakRic's CFO, suggesting that MakRic file a short-year federal return for the period April 1 to September 30, 2008 (the closing date). Gulf Star, which claimed that it had reviewed the stock purchase agreement, erroneously stated that the Shareholders had sold their MakRic shares to TS3.

MakRic's outside accountants prepared a Form 1120 for the tax year that had supposedly ended on the day of the closing. The accountants did not review the stock purchase agreement. Instead, they relied on the CFO's statement that TS3 had purchased MakRic from the Shareholders.

MakRic's short-year Form 1120 did not report its $16.5 million sale of Alpha. The return therefore omitted the company's $8.1 million gain from the sale. Thus, MakRic did not pay any of the $2.8 million in corporate tax it owed.

The accountants also prepared the Shareholders' individual returns for 2008. Once again, the accountants assumed that TS3 had paid $16.5 million to the Shareholders to acquire their MakRic stock. The Shareholders therefore reported substantial long-term capital gains on their Forms 1040—the best possible result.

The relevant calculations were laid out in Schedule D ("Capital Gains and Losses"). Oddly, the Shareholders described the property they had sold as "Alpha," not "MakRic." The accountants, however, testified that they had been using "Alpha" to mean MakRic.

MakRic was a holding company that owned only Alpha shares, and it was not unusual for the Shareholders and others to use "Alpha" in an extended sense to include MakRic. In any event, the accountants calculated each Shareholder's gain using his basis in his MakRic shares, so no harm done. The Tax Court let the matter pass.

Arguments in the Tax Court

When the IRS audited MakRic's short-year return, it assessed a $2.8 million deficiency and a $570,000 accuracy-related penalty for the company's failure to report its sale of Alpha. MakRic filed a petition with the Tax Court contending that it did not owe the tax.

MakRic offered two main arguments. The first was an appeal to substance over form. In form, perhaps it *appeared* that MakRic had sold Alpha. In substance, however, the Shareholders had sold MakRic.

MakRic's second argument was that there had been a mutual mistake in drafting the stock purchase agreement and the other transaction documents. Based on Texas law, MakRic should be permitted to reform the documentation to reflect what the parties actually intended, *i.e.*, the Shareholders' sale of their MakRic stock.

Substance over Form

Axiomatically, it is the substance of a transaction, not the form of its documentation, which should determine its tax consequences. In theory, both the government and the taxpayer should be able to invoke substance. But the IRS has persuaded many courts that the imperatives of tax administration justify strict limits on taxpayers' ability to assert positions contrary to the forms they have chosen. You pick it, you live with it.

In *C.L. Danielson* [CA-3, 67-1 USTC ¶9423, 378 F2d 771, SCt, *cert. denied*, 389 US 858, 88 SCt 94], the Third Circuit famously limited taxpayer's access to the substance-over-form doctrine. The taxpayers were shareholders who had sold their shares and executed non-competition agreements. The shareholders had agreed in writing with the buyer that 59 percent of the consideration they had received was being paid for their shares, while 41 percent was being paid for the non-competes.

The shareholders had little appetite for the ordinary income they would have had to report from the consideration allocated to the non-competition agreements. They argued that, in "fact" and "business reality," the buyer had paid *100 percent* of the consideration to acquire their shares. The allocation of 41 percent to the non-competes was a fiction that should not be allowed to determine real-world tax consequences.

The IRS makes this kind of argument all the time. The Third Circuit, however, refused to let the shareholders disavow the allocation of the sale price in their agreement with the buyer. Taxpayers may not challenge the tax consequences of their agreements except by:

> adducing proof which in an action between the parties to the agreement would be admissible to alter that construction of the contract or to show its unenforceability because of mistake, undue influence, fraud, duress, etc. [*Id.*, at 774–775.]

The Fifth Circuit, in which *MakRic* was heard, follows *Danielson*. [*See B.D. Spector*, CA-5, 81-1 USTC ¶9308, 641 F2d 376.]

Ambiguities, Patent and Latent

The Tax Court began by considering whether Texas law would permit MakRic to introduce evidence to alter the interpretation of the stock purchase agreement. In Texas, interpreting a written contract is primarily a matter of ascertaining the intentions of the parties as expressed *in the agreement itself*. [*Coker v. Coker*, 650 SW2d 391, 393 (Tex. 1983).]

If the agreement is ambiguous, however, extrinsic evidence may be introduced to resolve uncertainty regarding the terms of the deal the parties intended to implement. Here, it is useful to recognize, as Texas does, that ambiguity comes in (at least) two flavors: patent and latent.

An ambiguity is *patent* if it can be recognized on the face of the contract. The culprit is typically poor drafting, *e.g.*, the use of inherently uncertain or inconsistent expressions. *Latent* ambiguity, in contrast, exists if the contract is unambiguous on its face but turns out to be ambiguous because of circumstances in the world to which it attempts to refer.

For example, if Smith promises Jones that he will paint "the green house on Pecan Street," there may be no patent ambiguity. But if there are *two* green houses on Pecan Street, the expression is latently ambiguous. It is then appropriate to consider extrinsic evidence regarding *which* green house the parties intended for Smith to paint. [*Nat'l Union Fire Ins. Co. v. CBI Indus., Inc.*, 907 SW2d 517m 520 (Tex. 1996).]

Determining whether a writing is latently ambiguous requires the court to consider some kinds of extrinsic evidence—*e.g.*, the number of green houses on Pecan Street. However, the court may *not* consider extrinsic evidence regarding the parties' *intent*. [*See Meridien Hotels, Inc. v. LHO Financial Partnership I, L.P.*, 255 SW3d 807, 816 (Tex. App. 2008).]

MakRic first argued that the stock purchase agreement was patently ambiguous simply because the Shareholders were required to sign it. The Tax Court dismissed this out of hand. The agreement was clear that MakRic was selling the shares. It expressly provided that the Shareholders were signing only in connection with the reps they were making as the "Owners" of MakRic.

MakRic next pointed to the emails and tax returns suggesting that the Shareholders had *intended* to sell their MakRic stock. The contract may have identified MakRic as the seller of Alpha shares. But the extrinsic evidence of the Shareholders' contrary intention showed that the agreement was *latently* ambiguous.

The Tax Court rejected this argument, too. In Texas, extrinsic evidence of the parties' intent cannot be used to establish that the agreement is ambiguous. After all, extrinsic evidence of intent is supposed to be admitted only if the contract is ambiguous. Admitting such evidence to establish that the contract is ambiguous would be incoherent.

Wrong About Mutual Mistake

MakRic invoked a second exception to the *Danielson* rule, contending that the terms of the stock purchase agreement could be reformed for mutual mistake. Even when a contract is unambiguous, a court may consider extrinsic evidence regarding the parties' intentions to determine whether a provision was the product of a shared misunderstanding of a material fact. [*See, e.g.*, *Estes v. Republic Nat'l Bank of Dallas*, 462 SW2d 273, 275 (Tex. 1970).]

The problem for MakRic was that the parties were not *mutually* mistaken about who was purchasing what. TS3 believed MakRic was selling Alpha. No mistake there. Only MakRic thought the Shareholders were selling MakRic.

MakRic tried to get around this by reframing the issue. TS3's obliging chairman had provided an affidavit stating that TS3 would have been willing to buy *either* Alpha *or* MakRic to help the Shareholders reach their tax objectives. When the Shareholders decided to forgo the dissolution of MakRic, TS3 had assumed that the Shareholders had found some way to report long-term capital gain, even if MakRic was selling Alpha.

MakRic argued that *both* parties had incorrectly believed that the transaction would provide the Shareholders with their desired tax result. This was a mutual mistake that justified reformation of the stock purchase agreement to provide for the Shareholders' sale of MakRic.

This argument also went nowhere. The Tax Court pointed out that TS3 was not mistaken about the nature of the transaction it was entering. At most, it held an erroneous belief about the *tax consequences* of the transaction for the Shareholders. But mutual mistakes concerning the legal or tax consequences of an agreement do not warrant reformation. [*See*, *e.g.*, *Hamlin Trust*, CA-10, 54-1 USTC ¶9215, 209 F2d 761, 765; *Marsh v. Marsh*, 949 SW2d 734, 745 (Tex. App. 1997).]

Getting Down to Substance

The Tax Court held that MakRic's substance-over-form argument was barred by the *Danielson* rule. Nevertheless, the court also reviewed the record and found that the substance of the transaction was MakRic's sale of its Alpha shares.

MakRic had argued that the substance of the transaction should be determined based on what the parties had *intended*. But all the agreements they had signed had clearly described a sale of Alpha. The Tax Court found this objective evidence more persuasive than the emails and tax returns supposedly showing that the parties were trying to sell MakRic.

Another way to think about MakRic's appeal to substance is to recall that the holding company was nothing more than a corporate charter and an Alpha stock certificate. MakRic was just a box on the organizational chart. To anyone other than a tax professional, the difference between selling MakRic and selling Alpha might have seemed, well, insubstantial.

There was also the fact that the Shareholders could have eliminated MakRic at any time without adverse business or tax consequences. Plainly, it would have been a bad idea to *dissolve* the vestigial holding company. But they could have achieved the same result by doing a *downstream merger* of MakRic into Alpha, which would have qualified for tax-free treatment under Code Sec. 368(a)(1)(A). [*See* Rev. Rul. 70-223, 1970-1 CB 79.]

Following the merger, the Shareholders could have sold their new Alpha shares to TS3. The Shareholders would have had a tacked holding period, so they would have realized their goal of reporting long-term capital gain. The quickie sale would not have posed a continuity-of-interest problem for the downstream merger because TS3 was not related to Alpha. [*See* Reg. §1.368-1(e)(1)(i).]

MakRic presents one of those galling scenarios in which the taxpayer could have avoided a big tax bill by making a simple formal adjustment. In such cases, it is only natural for the taxpayer to argue that the IRS should look beyond formalities. According to the maxim, equity regards as done what *should* have been done. Are we to expect less from the IRS?

Under the *Danielson* rule, the answer is plainly yes. The IRS has its hands full auditing transactions as they were actually documented. As Judge Friendly sagely observed:

> It would be quite intolerable to pyramid the existing complexities of tax law by a rule that the tax shall be that resulting from the form of transaction taxpayers have chosen or from any other form they might have chosen, whichever is less.

[*Television Industries, Inc.*, CA-2, 60-2 USTC ¶9795, 284 F2d 322, 325.]

Concluding Observations

Does it all come back to one cryptic email? Well, MakRic would almost certainly have saved $3.4 million if the CEO's email had relied a bit less on executive telepathy. That would have been an impressive return on an investment of 30 seconds.

Is it realistic to expect CEOs to change their deeply engrained email styles, even for a major M&A transaction? Probably not. Fortunately, that is usually not a problem because miscommunications can be cleared up when reviewing the draft deal documents.

The lawyers typically take the lead on that. But clients have a role to play. They may not want to get into the weeds, but they should at least review the recitals and the basic provisions of the transaction.

If clients don't recognize the deal described in the documents, they should say something. Either the draft agreement has got the deal wrong or the recitals need to be clarified.

"If you see something, say something" is always good advice. But you can't see what you don't read. So, the first order of business is to get clients to review at least *some* of the draft transaction documents. Now, that doesn't sound too unreasonable, does it?

Wolters Kluwer

2700 Lake Cook Road
Riverwoods, IL 60015

10028607-0570