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Tax Proposals and the PGA Tour-LIV Golf Merger

In June 2023, the PGA Tour and LIV Golf announced a planned merger. The PGA Tour is the world's largest professional golf league, while LIV Golf is a newer league financed by the Saudi Arabia Public Investment Fund (PIF), a sovereign wealth fund. Two tax issues have been raised with respect to the merger of the PGA Tour and LIV Golf. One issue is the tax-exempt status of the PGA Tour. The second issue is the favorable tax treatment of sovereign wealth funds compared to the treatment of other foreign investors in U.S. assets. Legislation has been introduced to eliminate these tax benefits for sports leagues with assets over \$500 million and for certain sovereign wealth funds.

Tax-Exempt Status of Sports Leagues

In a provision dating back to 1913, business leagues, chambers of commerce, real estate boards, and similar organizations are eligible for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code (IRC). Sports organizations such as the PGA Tour fall into this category. (Note that the PGA Tour, although originally formed by the Professional Golfers' Association of America, is now a separate organization for tour players.)

Other major sports organizations have voluntarily given up their tax-exempt status (the National Football League in 2015 and Major League Baseball in 2007) or never were organized as tax exempt (National Basketball Association). News reports at the time indicate that reasons for relinquishing tax-exempt status were public relations and not disclosing compensation of officers. A search of Form 990s also indicated that Major League Soccer and the National Hockey League do not claim tax-exempt status.

To qualify for tax-exempt status, the league must not be organized for profit and income must not benefit any private shareholder or individual. The idea behind tax exemption of a business league is that it serves the common purpose of the businesses rather than being designed to make a profit.

Tax Treatment of Sovereign Wealth Funds

Foreign investors in the United States are subject to a 30% withholding tax on dividends and certain interest payments. These rates can be reduced by tax treaties.

Foreign governments are exempt from these taxes, including sovereign wealth funds. This treatment is based on IRC Section 892, which exempts foreign governments from taxation on earnings from noncommercial investment. It dates from 1917 and reflects the concept of sovereign immunity. Sovereign wealth funds are state-owned investment trusts that may be used to manage currency reserves or revenues from natural resources and may be

invested in a number of types of investment, some resembling venture capital investments.

The largest sovereign wealth funds are in Norway, China, Abu Dhabi, Kuwait, Saudi Arabia, and Singapore.

Background on the PGA-LIV Merger

The PGA Tour is the world's largest professional golf league, although there was a smaller, significant European PGA Tour. In 2020, the two leagues formed an alliance with the PGA Tour owning a minority share of the European PGA. The European Tour is now referred to as the DP World Tour for sponsorship reasons. DP World is a multinational logistics company based in Dubai in the United Arab Emirates. In 2022, the alliance was strengthened with an increase in ownership of DP World Tour by the PGA Tour, and some players in the European Tour being given PGA Tour cards.

The formation of LIV Golf, ultimately financed by the Saudi Arabia PIF, was announced in 2019, and the league had its first tournaments in 2022. It has signed up a number of golfers who played in PGA tournaments; according to news reports, it has offered large payments for contracting to play in LIV Golf tournaments. While Tiger Woods reportedly rejected a contract, Phil Mickleson and several other top players have signed up with LIV Golf.

The PGA Tour banned players with contracts with LIV from playing in PGA Tour events. LIV Golf and some of the banned players filed a lawsuit alleging anticompetitive practice violations by the PGA Tour. The Justice Department began an investigation. The PGA Tour countersued LIV Golf.

While the PGA Tour was under pressure to increase prizes and player benefits, LIV Golf was having difficulty getting media coverage in the United States. Some commentators point to the benefits to both of a merger given these concerns.

On June 6, 2023, the PGA Tour and LIV Golf announced a planned merger, which would also include the DP World Tour. While the details are not clear, apparently the merger will involve the creation of a taxable firm, although the PGA Tour will continue to exist. All pending litigation was dropped.

News reports indicate that Jay Monahan, commissioner of the PGA Tour, will serve as chief executive officer of the new combined organization. Saudi PIF Governor Yasir Al-Rumayyan will serve as chairman of the board, although the PGA Tour will retain a majority of the seats.

Issues With the Merger

Most criticism of the merger has centered on concerns about combining with a league financed by a country accused of using sports to distract from human rights violations (termed “sportswashing”). Families of victims of the September 11, 2001, terrorist attacks also raised concerns.

Following the merger announcement, Chairman Richard Blumenthal of the Senate Committee on Permanent Investigations launched a probe into the merger. Senators Elizabeth Warren and Ron Wyden have also asked the Justice Department to look into the potential monopolization of golf by the merger, and Senator Wyden, as chairman of the Senate Finance Committee, began an investigation that also noted concerns about national security.

Concerns were also expressed about the tax-exempt status of the PGA Tour, which stands to benefit from the merger. The merger may also lead to increases in compensation for professional golfers.

Tax Proposals

A number of proposals have been introduced over the years to disallow tax-exempt status for major professional sports leagues. While some of these proposals were motivated by issues with the National Football League, they continued to be introduced after 2015 when the league gave up its tax-exempt status.

At the beginning of 2023, Representative Greg Steube introduced the PRO Sports Act (H.R. 578), which would disallow the tax exemption for professional sports organizations with gross receipts of more than \$10 million. In a press release, Representative Steube noted that the PGA Tour would have paid \$80 million in taxes from 2016 to 2019 if it had not been tax exempt.

On June 7, in response to the PGA-LIV merger, Representative John Garamendi introduced the No Corporate Tax Exemption for Professional Sports Act (H.R. 3908), which would eliminate the tax-exempt status for professional sports leagues.

On July 26, 2023, Senator Wyden announced the introduction of two bills relating to tax benefits:

- The Sports League Tax-Exempt Status Limitation Act (S. 2519) would disallow tax-exempt status under IRC Section 501(c)(3) for sports organizations with more than \$500 million in assets. This bill would largely target the PGA Tour, since most other large sports organizations are not tax exempt. It would also prohibit an entity that lost its status from regaining it if assets fell below \$500 million in the future. The PGA Tour reportedly had \$3.9 billion in assets in 2020.
- The Ending Tax Breaks for Massive Sovereign Wealth Funds Act (S. 2518) would remove the exemption from the withholding tax for countries that have more than \$100 billion in investment funds available globally. The exemption can be retained, however, for countries that have a free trade agreement or a tax treaty with the United States and are not a “country of concern.” These countries of concern are listed in Section 4872 of Title 10 of the *U.S. Code*. The Finance Committee news release indicates that countries affected by this provision would include Saudi Arabia, Russia, China, Qatar, the United Arab Emirates, and Kuwait.

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