Saish Setty	Welcome to Parallaxes Capital's TRAilblazing podcast, the podcast that's focused on Tax Receivable Agreements, also known as TRAs and everything related to them. In this episode, we sit down with David Peck, a powerhouse in the realm of tax law who will take us from everything from TRAs to actually private jets. And with over two decades of expertise, David heads V&E's (Vinson and Elkins) Tax and Exec Comp departments. He's been instrumental in guiding companies through intricate tax planning and structuring for complex transactions. When you're working or structuring a transaction, you quickly find out that many tax lawyers don't seem to be communicating in English. But David in contrast, is one of the few counsels who can hold your hand through labyrinth of tax considerations while making you feel like you understand the how and the why. We've had the privilege of working with David before and I hope this conversation will help shed some more light on tax law and TRAs. Great. So, David, thank you for joining us today. I guess I was hoping we could kick off by you sharing a little bit about your background and your journey into tax and law in particular. I think it's very rare that you meet, say the precocious eight-year-old that wants to be a tax lawyer. So definitely would love to hear about what sparked your interest.
David Peck	Sure. Well, I appreciate you having me here. Excited about it. So how did I get into tax law? My father was a tax accountant, his father was a tax accountant, and my sister is also a tax accountant, so maybe you could say it was in the DNA, but my particular path was a little more practical. I showed up at the University of Texas in Austin and was asked to pick a course of study and so I asked the question, what is the major that is most likely to lead to gainful employment? And the answer is engineering. And then when I looked at the syllabus and saw calculus for engineers, I thought, okay, what's the second most likely path for business school? So, I enrolled in the business school and then chose accounting, and then within accounting chose tax. I gave some real consideration to starting in public accounting, but I also always had wanted to go to law school for some reason or another and not necessarily to be a tax

	lawyer. It just was something I was always interested in. And I had decided that if I started earning money sufficient to have a decent deal, I might not go back to being a poor student again, so I should just power right through. So went on to law school and actually had a hard time debating between tax and corporate. Spent some time in both of those areas, but once I got immersed in some of the tax projects, I knew that was the right home for me. It sort of hit my personality. Well, so maybe it is in the DNA.
Saish Setty	There's certainly taxes in the DNA. I guess maybe what caused you to switch from accounting to law then? Or did you consider accounting really full-time?
David Peck	Yeah, I actually did. I did an internship, I interviewed with an accounting firm, gave some real consideration to spending a few years in an accounting firm before I went to law school. It was just one of those things where if I was going to go to law school, it felt it was more likely to happen if I just powered through and didn't get out in the real world and that I might not make it back. But there are plenty of people who do that. But for me, I felt like just powering through school was probably the most likely round. Yeah.
Saish Setty	I think that makes sense. I mean I had a year, I'd say in the real world before law school and I think any longer than that, and maybe going back to school gets less and less attractive. But I guess on a point of personal interest then, when and how did you first come across tax receivable agreements in your practice or otherwise?
David Peck	Yes, so tax receivable agreements are largely associated with an UP-C structure. So maybe kind of going all the way back, what's the first time I came across an UP-C type structure? And I think that the REITs sort of invented that because of the rules need to REITs where you can't contribute property to a REIT for shares in a tax deferred transaction. They created the umbrella partnership, the UP and UP-C called it an UPREIT. The first time I remember seeing that structure in a C Corp, not in a REIT, was when Barnes and Noble, I don't know if they're still around a bookstore back in the dawn of the internet, what was going to IPO their digital

	business. And so they formed a partnership in an UP-C structure. It did not have a Tax Receivable Agreement, but it's the first time I can remember seeing a C corporation using that partnership. And of course, part and parcel of that structure is when the partnership interests are exchanged for corporate shares, there's a tax event and a step up. And so, the first time I remember seeing people capitalize on the step up was when I was read about the Blackstone IPO and I think it was in 2007. And so, when they incorporated the sponsor and the management company, they used an UP-C structure and a Tax Receivable Agreement. I don't know if there was one before that. It certainly was the one at the time that earned the most press probably a couple of years later before I actually was involved in working one. But I spent a bunch of time reading about Blackstone and Och-Ziff and all the ones that had used it in sort of mid two thousands.
Saish Setty	No, definitely. I feel like the Barnes and Noble story is always a fun one. If I recall correctly, their name at that point was actually Barnes and Noble.com, which I think probably lets most people give an exact date on when the IPO probably was taking place. I guess when you came across like that for the Blackstone TRA or the Och-Ziff one, in those very early days of TRAs, did you have any initial impressions of them or was it more of a, shoot, this is so obvious we should always be doing it?
David Peck	I think some of both. Always the issue when we did IPOs the traditional way was if the current owners, the company IPO-ing had a very low basis and you just incorporated it in a tax deferred manner, then your public corporation set out its life with a very low basis and not much of a tax shield. And so the UP-C structure made a lot of sense. Well, you could also have an IPO transaction structure where it's fully taxable upfront, right? You see some of those where a company IPOs with a 338(h)(10) election or in a fully taxable transaction and gives the public company a full basis step up at the beginning of its life, right? But the downside for that is somebody's paying tax at the IPO and not at a later point when they get liquidity. So, once you sort of try to put together a solution for those two problems, how can we give the corporation stepped up tax basis? So, it starts

	life with full attributes, but yet have the owners not recognize a tax event until they're ready to get liquidity. And that UP-C structure captures both of those. Once you sort of hear about it and read about it, it makes a lot of sense. It's not something that is nefarious. I mean it's really just pushing the timing of a taxable event out to a point in time where it's convenient for both the corporation and the former owners.
Saish Setty	Definitely. And I guess from your perspective then, have your clients gone from seeing TRAs as a, what on earth is this to Oh, that's awesome. It makes a ton of sense. And do you face massive educational hurdles or challenges when you're counselling your clients on TRAs?
David Peck	Yeah, there's definitely more education I think in the market now than there has been historically more familiarization with the TRAs, we can point to whatever type of industry, the company that is IPO-ing is in. We can generally point to a precedent in that same industry that uses structure, right? So, there's some comfort there. The investment bankers are all very familiar with the structure and it's usually one of the first things they talk about. If we're talking about a company that's in pass through form that's going to undertake an IPO and the accounting firms have gotten much better at modelling the benefits. Obviously, the biggest benefit of A TRA is the added value it can provide from the tax savings and quantifying that is somewhat challenging. So, the accountants have gotten better at that. But in terms of when we have a client that is embarking on an IPO process and we sit down to talk about the options, are they immediately familiar with the UP-C structure with TRAs? No, generally not. I mean if you think about it, they're not too many people who are serial participants and IPOs, right? There are some, but most of the people we run across, this is the first time or one of the few times they've participated in IPO. And so, there's a pretty significant education process and it's not the most straightforward thing for people to understand. So, there are definitely some challenges in educating the people involved and make sure they understand what they might be getting themselves into.

Saish Setty	And so, I guess then natural question for me at least is are there any quirky stories of a client having a eureka moment? When you describe the TRA to them, are they pretty just generally pretty excited to find out if hey, we're getting our equity value in the IPO and now we're also getting this TRA curious. What kind of reactions you've seen from that?
David Peck	That? Yeah, I don't know if there's any eureka moments I can think of, but the numbers are pretty eye popping and we have a client and the rumour is he named his private jet TRA after the source of funds that allowed him to.
Saish Setty	That's a first world situation if I've ever heard one.
David Peck	It can definitely be a lucrative process if used properly. And so especially when you get some numbers in front of people in the right situation, it gets people's attention and then it's sort of getting them focused on, okay, what are the counter considerations? What are the drawbacks? What are the complexities involved that you need to make sure you understand?
Saish Setty	Definitely, I guess maybe the pro is puts you one step closer to a private jet, but what should company owners and advisors know then from the other side of things before they implement the TRA?
David Peck	So, there's a couple of topics that are pretty common that we end up going round and round with to make sure they understand. So, there are definitely some complexities. We're talking about a structure where in an UP-C structure where your public company doesn't own a hundred percent the business, it owns a controlling interest in a partnership and there are non-con controlling minority owners. And so there are complexities with the accounting and accounting for non-con controlling interest holders. There's also complexity with the calculations on the tax receivables and the step ups. There are some limitations about if you have that structure, your ability to be included on indexes that we want to make sure our securities folks, sometimes people have some concerns about what's referred to as like the poison pill effect. If your tax receivable agreement accelerates on a change of control, then you have what could be sort of a costly

	expense for the company on a change of control at the expense of the shareholders. If you want to take advantage of the tax receivable agreement, then you'll continue to own your LLC interest. You won't get publicly traded shares. And as I mentioned before, you eventually will exchange your LLC units for shares in a taxable transaction, but having LLC units that are not listed does not give you the same immediate liquidity effects as having publicly traded shares. You have to exchange those and for shares before you can sell. And there are some limitations on your ability to do exchanges both sort of tax structured wise and also administratively you don't want exchanges to happen every day and somewhat costly. And so, making sure people understand what their ability to get liquidity is if they continue to own LLC interest. But probably the biggest thing is getting people to understand what the magnitude is for them and when it could be realized, right? Because the TRA payments are based on the tax savings that the corporation actually realizes. And so, you have sort of two components. You have tax attributes that you have to deliver to the corporation and those can vary quite wildly even among owners who sort of commonly owning the target corporation. You could have a group of shareholders with very low basis who can deliver a very significant step up in their exchange and they would be in line to get a much bigger tax payment. Or you can have shareholders who have a high basis who don't deliver much at all. So, each group of individual owners, depending on their particular attributes, could be differently situated. So, people are going to want to understand and not necessarily be perfectly aligned. But then the second component is even when you deliver tax attributes to the corporation, the corporation has to actually use them to reduce its tax liability. And in some cases, you've got corporations that are making unlimited amounts of taxable income and they're absorbing every attribute they can get. But there are also situations where the corporation doesn't generate a lot of taxable income, has their own net operating losses, has favorable tax benefits, it creates itself and so therefore might not need those tax benefits generated.

	And even if it does use them, the payments are tied to when the tax is saved. So, a tax benefit isn't delivered until you affect an exchange and even then it might be delivered over an extended period of time, not uncommon to have the tax benefits realized over a 15 year period. So even though the numbers are eye-popping, we need to make sure people understand what does it mean to them? Are they going to get the benefit of it because the corporation can save taxes and over what time period. Those are all pretty complicated calculations that take some time for people to understand.
Saish Setty	No, definitely. And I mean I guess those calculations in some part are the core part of our business, so certainly familiar with that. So where do you see TRAs going from here then? I mean even when we started this strategy in 2017, the market has grown substantially, it's grown. If your baseline is the time of the Blackstone TRA, I think you've seen so much growth in the space over the last 20 or so years, what do you think the next 20 years will look like?
David Peck	Well, it's always difficult to predict the future, but I mean given the trajectory we're on and given the success that a lot of these TRAs have had, it seems like the market for them is going to continue to grow. We've got a continued increase use of pass through vehicles and the TRA is most effective I think when a pass through vehicle is undergoing an IPO because that allows you to generate the step up in basis and we're getting more and more use of pass through entities. Another factor in favor of TRAs is the differential and tax rates between corporation or the corporate tax rate relative to the other tax rates. And so, if right now we're at sort of a historically low corporate tax rate, but you can envision a situation where we sort of head back up closer, maybe not to 35%, where we'd come from, but it's something north which is going to make the Tax Receivable Agreements more beneficial. And then the third component I think that would be very useful in expanding the market is having a more liquid secondary market and getting some additional folks like Parallaxes in the market who can help facilitate transactions between TRA holders who are not necessarily wanting to wait 15 plus

	years to get their capital. Or maybe in the case of a lot of these TRAs are held by private equity funds who have a finite fund life and can't hold for that long and don't necessarily want to distribute out in kind. So, as we get more TRAs on the market and then we get more people participating in a secondary, you can see there being really accelerated growth in those.
Saish Setty	Yeah, definitely. And I guess just for our listeners benefit, in case they don't appreciate that fact on tax rates, the TRAs, since they're basically just paying out a company's cash tax savings, if you have corporate tax rates that are higher than they are now, those cash tax savings would be higher and so your TRA payments would be higher as well. And so maybe taking this question a step further, do you see any major challenges in the TRA space today? I think you touched on one interesting point, which is the almost poison pill like nature of A TRA potentially. Is that something that you see driving the space or anything else?
David Peck	We used to early on get some pushback from the bankers on the poison pill aspect and we used to get some pushback about whether a TRA obligation should be accelerated on a change of control. But it seems to have been pretty well adopted by the market at this point, and we've seen a number of TRAs yet fully cashed out in change of control transactions. So, I don't know if that will be that significant of a hindrance if there starts becoming some friction there. Probably the release valve is to spread the change of control, the cash out over a longer period of time following the change of control instead of an immediate cash out payment, but not enough friction that it would probably have a significant detrimental effect on the marketing of it. Maybe the biggest challenges I see are some people just don't like the complexity and we've seen handful of UP-C structures get collapsed here over the last 12 or 18 months. And the biggest reason cited is just the complexity of dealing with two levels of entities and the non-controlling interest in accounting and the fact that you can't be included on indexes and things like that. And so, there's some level of complexity that people just don't want to go to, even if the economics make sense. And so, we see some people making that choice. If another challenge related

	to what I said earlier is the lack of marketability. We've heard people say we could get a TRA, it will be very valuable to us eventually, but it's beyond the recognition period for us. It's beyond our fun life, it's beyond our life on which we're measured on our performance. We're not sure we're going to be able to monetize. It could create conflict. So having a market develop, a secondary market develop for TRAs I think would be very helpful. And the absence of a market I think by definition is a challenge.
Saish Setty	Yeah, definitely. I like to think at Parallaxes, we're certainly doing our part at least to build that nascent market and take it to the next level. And maybe on a more personal note then, just in case get our listeners back into this after a bunch of TRA talk, but what would you say is the trickiest part if your job today?
David Peck	The trickiest part of my job today, especially being as seasoned as I am or around as long as I have been, is the speed at which things are required to take place. And these things are complicated. Tax rules are very complicated. Tax structures are complicated. Every proposal has knock-on effects, and they sort of cycle through and you have different constituencies. And so, the days of getting a handwritten markup and having two weeks to think through all the issues and turn it back are over. And now you get a Word document emailed to you and you're expected to type your changes in and send it back in four hours. That's really the challenge. And it's the way the world is going. There's no way to stop it. But what you have to do to address it is you have to really staff up on your resources. You've got to have some really good resources available on a moment's notice. So, when something comes in that requires immediate attention, you're able to throw enough resources at it to tackle in the timeframe you're allotted.
Saish Setty	Definitely. And I certainly wouldn't take that as a personal attack, but I feel like I've probably been guilty of that. You guys in the past. What do you think has been driving that? Is it just a difference of client's expectations or technology or curious how you've seen that change?
David Peck	Technology is definitely a big part of it back when, not to sound like one of those old guys,

	but I had one of those. But back when I started practicing law, one law firm was in charge of inputting changes to a document, and they did that through their word processing department, which had like 30 people in a centralized building. And the other law firms who were involved turned in hand marks that they FedExed back and one word process because you couldn't, the technology wasn't where people could input on multiple sides. You didn't have the capability of responding on a moment's notice or overnight or if you were out of town. And so, a lot of the technological developments have made it, there have been a lot of great things because of the technological develop, but one of the downsides is you can always be reached at any time. And so, people understand that. I think business has moved faster too. I think the desire to get things done more quickly before markets change, before people change their mind, that kind of thing has really pushed it. And then to some extent, the lawyers are probably just guilty of consistently giving into demands and facilitating further demands on time and resources.
Saish Setty	Definitely. And you've reached, I think, what many would consider to be kind of one of the summits of being a tax attorney. What would you say continues to drive and motivate you in your work now? Is there a particular goal that keeps you passionate about what you're doing?
David Peck	I don't know if I have a goal. I'm not sure what it is, but I can tell you the things that motivate me. Number one is the people that I'm fortunate enough to work with, and that includes the people who work with me in my group, the people in other groups that I work with, the clients like you, and some of the others I'm fortunate enough to have are just incredibly supportive and appreciative and very smart and thoughtful and hardworking. And it really does make what is somewhat of a laborious job, at least according to my kids, a pretty fun job to have too. Just the people that you get to spend time with every day. And then the other factor is there's just a constant change in things that you're working on which make it challenging, right? There's very rarely complete repeat transaction and you've got tax laws that change. I've spent probably more time in the last 18 months learning the inflation

	reduction act and renewable tax credits than anything else I've done. And that's all sort of a recent development. And before that spent a tremendous amount of time in the SPAC world and just sort of things change over time, laws change, transaction change, and so it's always something fresh and new to learn, new problems to solve. Those are the two things I think that really keep me energized in day-to-day.
Saish Setty	I thought the easy answer to that might be the fact that you have a kid that's starting college soon, and I mean always love to close with a bit of a lighter question. So, I guess just imagine you've been granted the ability to time travel for a day. Where and when would you go? What's one piece of advice you'd give to your younger self or just someone from that time period?
David Peck	Wow, that's a deep question.
Saish Setty	It's a loaded question. I know.
David Peck	Well, okay, so I'll answer that with I think what is a humorous story. So, there's somewhat within the halls of V&E famous, maybe infamous email chain from November of 2013 where one of our corporate partners in New York sent an email to me and said, Hey Peck, have you ever heard of this thing called a Bitcoin? And I was gone, no idea what you're talking about. And he said, “Hey, check out this article.” It's some kind of a cryptocurrency where you can mine it. And he said, you're smarter at this than I am, which I'm not sure that was actually true, but why don't you look into it and if you think it's a good idea, we'll both invest in it. Otherwise, we'll pass. So, the email chain takes three weeks off and then it picks back up and it says, Hey, I looked into this, read a couple articles. It seems like a fad to me. I don't see how it's going to go anywhere. We're probably just going to lose our money. Let's just pass on this. And the response is, okay, sounds good. I think I might go back in time and type a different email if I had the time machine.
Saish Setty	That's a fair one, I guess. I mean, every cloud has a silver lining if that chain had gone otherwise, I can't imagine we'd had the pleasure of speaking with you today on this podcast, so I'll take it. But David, thank you so much for being a guest. Really loved our

	conversation and thanks for everything you've been doing in this space.
David Peck	Alright. We really appreciate everything you've done as well. Thanks for having me.
Saish Setty	Thank you.