Voice Over:	00:00	Welcome to Trailblazing Capitalizing on Tax Receivable Agreements, a Parallaxes Capital podcast that is here to guide you through the world of Tax Receivable Agreements. It's time for TRAilblazing.
Saish Setty:	00:13	In today's episode, we have the privilege of diving into the intricate world of Tax Receivable Agreements with the true luminary in the field. Joining us today is Eric Sloan, partner at Gibson Dunn and co-chair of the firm's tax practice group. With over three decades of experience. Eric is an expert in transactional and structuring matters, especially with respect to partnerships. Eric's reputation as a thought leader is underscored by his band one rating on Chambers USA amongst a career filled with many other accolades. He was also involved in the very early days of TRAs. In this conversation, we unravel the complexities of Tax Receivable Agreements, exploring their growth and role in diverse transactions, and gaining insights from Eric's wealth of experience and expertise. I also know Eric has a lot of great stories, so I'm sure this will be a fun journey. Eric, welcome to our podcast. Great. So thanks again, Eric for joining us today. I'd love to start at the beginning of your journey. So what initially sparked your interest in tax law? How did you find your way into this funky field?
Eric Sloan:	01:38	Well, it actually started because I thought it would be a good way to effectuate social policy, and it's something that Congress does from time to time, incentivizes behavior through the tax code, and I just thought that would be an interesting way to blend my interest in social issues with my interest in finance. So that led me into tax. And then in law school I went to the University of Chicago for law school and there was a really fabulous tax professor named Wally Blum, who is a real titan of the field in his generation, helped craft the modern income tax, and I heard he was a great teacher. So I took the class and just sort of kept going from there.
Saish Setty:	02:19	Got it. And was there a particular kind of social goal that you were maybe focused on in those early stages with cigarette taxes or something like that?
Eric Sloan:	02:27	It was really much more about redistribution of wealth and redistribution of income from people who have a lot to people who don't for all sorts of historic reasons, and then housing as well. I've always been interested in housing.

Saish Setty:	02:40	Got it. Have your views changed on any of those matters? Especially, I mean, housing is certainly one where I feel like this has been a very ongoing debate, redistribution as well.
Eric Sloan:	02:50	Yeah, I think for a while I became convinced that the tax code was actually a bad way to do what I was originally interested in just because of the complexity in using the IRS to do something that perhaps should be done differently. But I'd say much more recently in looking at what's going on with pillar two and the way the US continues to use the tax code and just thinking about the transferability of tax credits as well and continuing to put the IRS in the middle of all of that. I think that using the IRS and then accounting firms through the audit function, which is tied up with tax as well to enforce and essentially police what could otherwise be the wild wild west, maybe my much younger self was right for completely wrong reasons, but was right in that the IRS and pulling in the accounting firms to help police things as well, like the IRS recently did with RICs and REITs claiming losses if it ties to financial statements. I think that was absolutely so the IRS wouldn't have to police that and just let them outsource that to the audit function of accounting firms. So I'm beginning to think that maybe it makes sense again for all sorts of reasons and probably there's going to be some type of global war with the OECD to figure out how credits work in future tax system. So yeah, I continue to think It's interesting.
Saish Setty:	04:18	I mean, it almost sounds like you were at the very forefront of tax as an ESG type mechanism.
Eric Sloan:	04:26	Oh, completely by accident, and I'm sure people were doing it for generations before. There's a really famous piece written by I think Wally Blow and Harry Calvin, I want to say University of Chicago professors called the Uneasy Case for Progressive Taxation, which I read when I was in law school. And it talked about that, about how as an economic and tax policy matter does, progressive taxation can be justified. And so they wrote that piece justifying progressive taxation.
Saish Setty:	04:54	Got it. Also a little interesting. I wouldn't necessarily think of University of Chicago economics as being on that side of the spectrum, so it was kind of nice to see, right. It was well balanced. Yes.
Eric Sloan:	05:07	I think when they wrote that piece, it was before the rise of certainly Law and Economics, which was born in Chicago, I think some people say at Yale, but Chicago and Yale, I think they

		wrote it before that. But yes, they were. I don't think I ever met Harry Calvin, but was fabulous. Super smart guy.
Saish Setty:	05:25	Awesome, awesome. And I realize it did get a little sidetracked on law and economic now personal interest, but I guess maybe taking it back, so over your career, what would you say is one of the most exciting or memorable transactions you've worked on from a tax perspective? And I know this is a TRA podcast, it certainly doesn't have to be about Tax Receivable Agreements.
Eric Sloan:	05:49	Well, it's been a pretty long career and I've been lucky to have worked on a whole lot of interesting things. Some I didn't even realize how interesting they were at the time. When I was a very young associate, I worked on a REIT transaction that I barely understood, and as it turned out, it was one of the very first UpREIT, which I only realized later when I was looking back, when I was working on some of the early up season, convinced people to do Up-C. I dug into the history of UpREIT and realized that it was the MacArthur Glenn UpREIT. It was one of the very first ones. As I said, at the time, I didn't understand the significance and certainly didn't understand what was going on in the transaction. There were some transactions that were private there were super fascinating that sadly I can't talk about, but of the public ones, I've represented Lazard for a long time.
	06:37	So I was involved with Lazard in its IPO, which was the first what we think of currently as an Up-C. We didn't call it that back in the day with a TRA. There had been a couple before that, but it was the first with a TRA. And so that was really fun. Again, a bit at the time I understood how important it was, but it was really later because I managed just, we get lucky with where we sit and the people we know. And I happened to be sitting at Deloitte with the right client base, with people who wanted to do interesting things. And so I managed to get involved with some of the early Up-C and TRAs and I negotiated some of the early provisions. And so those were really fun. And then by the time GoDaddy came around, which I was one of the people structuring GoDaddy, that was really fun because it was big, big company.
	07:30	Everybody knew who it was and it brought together things that I've been working on for a long, long time. But I will say actually negotiating the first TRAs for a Blocker Corp, which again, I had no idea it was the first time. It's one of the early Up-C. So if you're busy, I don't think you spend a lot of time thinking about, oh, this has never been done before. I later found out. Someone

told me, I've never tried to verify that someone told me that was the first time. And having the person representing the underwriters telling me that they thought it was inappropriate and explaining to them that really NOLs are just more mature basis, and I didn't see why confronting a tax asset at a different point in its life cycle should matter. That was super fun.

Saish Setty:	08:17	Yeah. So I mean, you've certainly been there from the very beginning of TRAs, especially with Lazard. How has it changed in terms of how clients view TRAs, both the companies, the interested parties, as you mentioned, the underwriters, I have to imagine they've gotten more comfortable with it, but what were things like in those early days?
Eric Sloan:	08:39	Well, at first with Lazard, as I was saying, I did not propose the TRA. Lazard and I had essentially worked through the Up-C structure, but it was absolutely Goldman Sachs that suggested the TRA. I remember when the company called me and said, oh yeah, there's this thing that Goldman had proposed back in the day. They were called ITR agreements, income Tax Receivable Agreements and morphed to be called A TRA. But in the early days after that, working with a couple of private equity firms, they got it. Explaining it to the underwriters and underwriters council in the first few was a little difficult because they hadn't seen it before. And just explaining to them that once you're precedent, everything rolls downhill from there. But working with companies when they started to do it and then with their tax departments and explaining to them that this was because actually very recently I had someone ask me What's in it for the company?
	09:42	And I said, well, there is this 15%, but you are not the one being benefited by this. This is going to lead to more compliance work for you, and this is for the benefit of the pre IPO owners. It's their company. And this is a way of ensuring they get paid adequately for the value they're delivering. And so walking through that dynamic as the major investment banks figured it out, sometimes you run teams at the investment bank that would be hostile to it, and you just have to basically direct them to their colleagues who had worked on it before. And then as the accounting firms all began to figure it out and built up teams, it's now very much a process. And quite frankly now pretty much anybody can do an Up-C, my fear about that is people download forms from Edgar and I think they don't really understand them. And I worry about that. I read every time I work on one, I never ask someone, people say, oh, here's a black line from the precedent. And I always say, unless it's one

of my precedent, I'm not comforted by the fact that this moved through some law firms and accounting firms. I want to make sure I understand because although TRAs generally look alike, there's some pretty strange stuff that you can find under the hood in some TRAs,

Saish Setty:	[11:01]()	The devil's certainly the details I'm sure you appreciate we read a ton of TRAs here. And Eric, I will say there is a flavor to the TRAs that you have drafted. I feel like I can identify them pretty easily. And just out of curiosity, so you talked about, I mean maybe it was the early stages, but that hostility coming from certain parts of the banking process, was that a focus on marketability or a concern about the IPO success and execution, or was it coming from somewhere else? Just a fear of the unknown almost.
Eric Sloan:	[11:37]()	I think all three very much interrelated, right? With most tax lawyers never want to do something that 10 other people have done. We all want to do something. Well, most of us want to do something no one else has ever done for someone to say, oh, here's all this precedent. Well, I'll let someone else work on that because I'd rather work on something that hasn't been done before or at least I haven't done before. I think bankers, there are some bankers, very creative bankers who like solving problems. A lot of people just want to get the deal done. That sounds disparaging to bankers, find lawyers like that as well. I don't mean it to be disparaging, but a lot of bankers, there's an IPO to happen. Everyone is interested in getting that deal done and if something is different at all, everyone's going to focus on the difference and a TRA that no one has heard of before or is not used in that industry.
	[12:32]()	I still get that question. Okay, we know there are hundreds of these out there. Has it ever been used in this industry before? And I have an industry agnostic practice, so I never know why people care, but it is because the bankers are going to look at the documents for the last deal that was done in that industry and they're not going to see a TRA and they're going to say, well, the market is going to stare at that, think something's off. But one by one. I remember one of the very first, it may have been the first after Lazard, I was on the phone with the CFO for the company. There's a major law firm I was working with on this. I was back at Deloitte at the time. So the law firm talked about how they would do the IPO and I said, we could do it that way or we could do it this other way, what is now known as an Up-C.

	13:21	And I walked the CFO through it, and he was extremely uninterested in the complexity that I was going to bring to his structure, not withstanding that I told him that Lazard had just done this. And I said, well, and there's this other thing, and it described the TRA and one of my really outstanding partners at Deloitte had done very simple math and we said, we think on a present value basis, we'd have to, it depends on a lot of things, probably adds 10 to 15% to what you all are going to take at the end of the day. And there is a silence. And then the CFO said, let's do it Eric's way. That was super fun. And I think ultimately it comes to that. People understand that there's simply a lot of value and if you don't get paid for it, you are giving it away to somebody else.
Saish Setty:	14:09	And I guess on that note then, so are there any specific challenges, considerations that still arise when you advise on the Up-C structure?
Eric Sloan:	14:17	I continue to find it an interesting and difficult dynamic because on the one hand, you want to put together a TRA that is going to be something that you, your firm, others like you can market because everybody's interested in that. I mean, I remember in the early days people were saying, well, one of these days a market will develop, took a long time. So you want to do that and make it marketable, make it really friendly. On the other hand, the conflict or the tension between that and making it something that does not turn into a nightmare for the company to administer and being the person who has to identify all those issues and essentially is looked to provide the appropriate balance that is challenging and fun and something I still struggle with explaining to everybody in a way that everybody can follow because everybody's very sophisticated, but they're sophisticated in very different things.
	15:16	And I remember on one deal the general counsel of one company, I was explaining to him how we were going to make this transferable and he said, no, you're not. And I looked at all these good reasons and he said, no, no, no, I don't care. I don't want a hundred people holding this thing because I can't do that. And so that's where we began to limit. It was in that deal we limited the number of transferees and that can get extremely bespoke in who can transfer to how many people and how many times and what access do they get to the underlying rights in the agreement and the like, which I'm sure you know better than I do.

Saish Setty:	[15:53]	And I mean with all things, I view that as effectively a balancing. It's not ideal for anybody if the TRA goes from 50 holders to a thousand holders. So certainly sympathetic to that. But also it's challenging in terms of liquidity then,
Eric Sloan:	[16:08]	Right? And explaining to someone who I think should be the TRA representative, why they would ever take that on, how are they replaced? There are all these different decision points in every agreement. But in a TRA, there are just so many different decision points that when you first read a TRA, you'd never think there's any significance to those points.
Saish Setty:	[16:29]	I guess where do you see TRAs going from here then? The market's grown substantially in the last 20 years. What do you think the next 20 years will look like? And I'm also thinking back to how you push these into blockers and things of that nature. Where do you see it growing
Eric Sloan:	[16:46]	With the reduction in rates they're less valuable and Up-C, I think people now understand Up-C for the most part. This is something we tried to explain to people back in the day, but are largely transitional structures rather than the permanent state for a company. Not saying they couldn't be, there are all sorts of good reasons to maintain the partnership beneath, but I think most people think that over time they go away. I certainly think in the Up-C, there's no reason for them to diminish and that tax assets, and that's a term that we sort of swapped out early on, the tax assets, they're now so all encompassing. I do think people are beginning to pay a little more attention to how far removed from reality the tax benefit payment is because they're all sorts of notional calculations taking place. I think over the next handful of years people are going to focus on that and making sure that a public company is not paying for more than it is actually receiving as a result of notional calculations.
	[17:54]	But to your point, I don't know how much they can expand beyond the Up-C. I mean their distribution TRAs, people use different terms for those. But I see even in private transactions, just the fact that TRAs are out there, they're pushing the private market as well, and that's episodic in private M&A when people pay for tax assets. But just having that out there as something everybody knows about makes it difficult on the buy side to just say, no, no, no, we're not paying for everything for anything. And so you typically see at least a discussion. Often times buy side will say, we took that into account. That's in the price. In the price we paid you is the value of the tax assets. Please don't ask for more but encourages the discussion.

Saish Setty:	18:37	Definitely. Definitely. Where do you see, I mean do you have any thoughts on where the secondary market is going for TRAs? We're certainly biased on that question, but always curious.
Eric Sloan:	18:47	Yeah, I've worked on a couple of those. I think that especially in the private equity space, people don't want to hold these things forever. So I thought from day one, and I continue to believe that's going to be the most fruitful place, is private equity firms that want to exit wrap up funds. Private equity firms don't like to have funds sitting there holding very little. And so just being able to say to people, you can exit. I know that companies really like to buy them in, which doesn't work as well for you all, but I know that companies have a keen interest after some period of time in just saying it is enough. There's not enough value here, so let's just terminate them. I can't really comment on the litigation. I mean I'm not involved in any of it. Some of the things that I read just don't resonate with me at all.
	19:38	But I do think that they are a damper on M&A. And so I think that right, wrong, indifferent, I mean it's just a reality. If you're looking at a company that you think is worth a hundred dollars but it's got a TRA liability of 20, you're not going to pay the equity holders a hundred, you're going to pay them eight. So I think that people are focusing a lot more on that and how that impacts TRA in the secondary market, I'm not sure, but I think it will have an impact on the secondary market because it is awkward for companies when they have people holding the TRA who don't hold equity. It would not surprise me to see more flexibility built into TRAs in connection with third party M&A trends. I don’t know how that would affect underwriting. Probably not terrifically well.
Saish Setty:	20:26	Yeah, we're certainly not in the M&A arbitrage space, but realizing no specific thoughts or unable to maybe give specific thoughts on the litigations themselves, but do you see any other major challenges in the TRA spaces today?
Eric Sloan:	20:43	I don't really. People seem very familiar with them. The accounting firms have built up groups that can figure everything out. I mean, I remember again in the early days getting a friend of mine to actually do the TRA calculation. He was in another accounting firm. That was a lot of work, but now they're geared up for it and the documentation, and as I said, there are differences here and there, so it just seems to sort of move along. So I'm sure there are challenges. I'm not thinking that's one of the things that keeps what we do so interesting. But not really. Other than just thinking about what assets, and this

actually, one interesting thing I think that I haven't seen a lot of people talk about is protecting the TRA holder from restructurings. Companies can do all sorts of things that can reduce their tax liability making TRA less valuable. And I've worked on a couple where we didn't prevent restructuring, but we essentially said, this is the company and if you do something that's fine, but it's not going to affect the TRA calculation, which then makes it less interesting for the company to undergo. Not uninteresting entirely, but less interesting, undergo a restructuring. So I think that, and I've worked on a few things where I think the TRA holders were surprised that things could be done that would dilute the TRA value. So I think people are going to be focusing on that more.

Saish Setty: 22:09 Definitely. I guess just shifting gears a bit then on a more personal note, what would you say is the trickiest part of your job today?

Eric Sloan: 22:17 Well, that's one of the great things about being a tax lawyer is so much is tricky about it. There's the aspect, for example, with partnership tax, I mainly focus on slowing down and making sure that I'm not missing something because I know sub-chapter K really, really well. But the danger and once you know something really, really well is thinking that you know the whole thing and that you won't misapply it. So slowing down, but I'd say having moved from an accounting firm to a law firm, the practice is simply broader for every individual lawyer at a law firm, you're just doing more different things. And so making sure as you move from task to task that you're giving everything the appropriate level of focus. I have always found just the pausing and thinking and making sure that I'm not moving too quickly. For me personally, the most challenging aspect of the job, and again, it's one thing I really like about it technically right now, the most challenging thing, I don't know if that's where the question was going, is absolutely CAMT in pillar two. I mean, I hope CAMT dies a quick death because it's fast. Pillar two is going to be coming upon us. And so technically just dealing with that and think about how that's going to impact M&A and just regular planning for companies is definitely the most technically challenging.

Saish Setty: 23:34 And you're certainly not alone in those wishes. And again, you've accomplished almost all there is now in tax law, to put it politely, what continues to drive you, motivate you every day? Is there a particular goal that you're passionate about?

Eric Sloan:	23:50	Well, I appreciate that. I mean I like almost every aspect of what I do. You hear people saying all the time, especially when I was younger, I hear people say this, but it's true. It is working with training younger people. I've been incredibly fortunate to work with just some super talented associates throughout my career. Almost all of them actually, I count as very good friends and many of whom are leaders in the profession now. And that's really just fun. When you're working with someone, you've been working with them for a few years and all of a sudden you hear them say something and you hear echoes of yourself, echoes of people who trained you, someone you've trained, but they say it in a different way that's actually better than the way that you would've said it. Or when a corporate partner of mine says to me, yeah, we want your associate, we don't need you on this call. That's success. And at this point in my career, truthfully, it means everything. I know I'm very technical and I've been really lucky, but right now that really means everything and helping my firm. All law firms are changing and trying to reach goals and helping the tax practice at my firm lead the way we like to think we're leading the way for what my firm is seeking to accomplish remains fun.
Saish Setty:	25:10	Got it. And I'm sure those associates are pretty lucky to be under your wing in terms of training and experience and everything.
Eric Sloan:	25:18	Well, one of my associates said to me working with me many times was working with a trainer that you wake up in the morning and you're like, oh really? But then when you're done you are like, I'm so glad I did that. So I think he's probably right. I mean I'm incredibly demanding but expect a lot of myself and so I want to pass that on,
Saish Setty:	25:38	Maybe not immediately after, but when you look back on in a day and you're a little sore and you feel the better for it, it's probably a good feeling. And hopefully we can close with our standard lighter question that I always like to ask, but imagine you've been granted the ability to time travel for just a day. Where, when would you go and if you're choosing to meet your younger self, what piece of advice would you give them or to somebody else in that time period?
Eric Sloan:	26:06	Well, yeah, I mean keeping it light, right? I mean, truthfully, I'd love to go back and back see what my wife was like as a young teenager because I met her, we were both in our thirties when I met her, and so we didn't really, it's not like we met in college and grew up together. So I'd love to just be around and watched

that just because she's wonderful and super smart and I'd love to see how she interacted with other people at that age. If I were going back and could talk to my younger self, as wonderful as my career has been and I went directly from Northwestern to the University of Chicago Law School and worked out fabulously, I would say take some time off between college and law school. And that's what I'm telling all of my kids. And when I say take time off, I don't mean actually, I mean just don't go direct.

	26:58	Don't go directly to law school because this is great as it is. It's just such a special time and you can learn so much. One of my kids just finished college and he moved out to San Francisco and he's an investigative journalist and I just think that sounds super interesting. He may do that the rest of his life, maybe he'll end up doing something different, but just take time because it's a very long career and taking three, four, or five years and trying other things, that's the only thing I would say to my younger self. As great as this career has been so far,
Saish Setty:	27:30	I wish I had anticipated the incredibly sweet response about your wife. I would've tried to maybe time this for Valentine's Day release. I'll see what we can do on that front, I guess. Do you think any of your kids are going to go into tax then or follow your footsteps in some way?
Eric Sloan:	27:48	Tax? I would be surprised. I think law, very possibly. My wife is also a lawyer. She represents, she was a general council of Labor Union, big labor union and represents artists and does a lot of pro bono work. I think they will lean more towards that than towards what I do. But you never know. I was mentioning my son, he's now doing a lot of work with mergers and acquisitions and antitrust and actually now understands why people find things interesting. I mean, that's one thing I said to them. I said to all of them is they think that people who do what it is we do because it's all ultimately finance and money driven. That's what motivates us. And you'll see there are a lot of extremely bright people in finance and if it were not interesting, they would find something else to do. So it's nice to see my eldest figuring that out, that it's actually really intrinsically interesting, but tax, I guess I'd be surprised.
Saish Setty:	28:49	You never know. I guess the jury is still out there. Well certainly appreciate you taking the time, Eric. It's always a pleasure to talk and hopefully we'll have you on again in the near future.
Eric Sloan:	29:00	Terrific. Thanks so much.

Saish Setty:	29:02	Good. Thanks Eric.
Voice Over:	29:04	Keep riding with us as we blaze the TRA trail by subscribing in your preferred podcast app. Learn more and get in touch at PLXCAP.com. That's PLXCAP.com. Information presented is for informational purposes only and does not intend to make an offer or solicitation for the sale or purchase of any securities. Parallaxes Capital Management LLCs podcast and its associated links offered news commentary and generalized research, not personalized investment advice. Nothing on this podcast should be interpreted to state or imply that past performance is an indication of future performance. All investments involve risk and unless otherwise stated are not guaranteed. Be sure to consult with a tax professional before implementing any investment strategy. Investment advisory services offered through Parallaxes Capital Management LLC are registered investment advisor with the US Securities and Exchange Commission. Registration does not imply a certain level of skill or training. Past performance is not indicative of future results.