



REIT **Wise** March 31 - April 2 **2015**



**NAREIT's Law, Accounting
& Finance Conference**

JW Marriott Desert Ridge Resort & Spa
Phoenix, AZ



Still More REIT Tax Issues
April 1, 2015

Still More REIT Tax Issues

Moderator:

Adam M. Cohen, Executive Director-Tax, W. P. Carey Inc.

Panelists:

Lynn Kawaminami, Partner, Deloitte Tax LLP

Roger Laty, VP-Tax, UDR, Inc.

Courtney Sargent, Sr. Manager, PwC

Steven Szymanski, SVP-Tax, American Tower Corporation

Agenda

- I. Tax Due Diligence Leading Practices
- II. Managing Built-in Gains
- III. Internal Controls in the Tax Function

Tax Due Diligence Leading Practices

Key Items

- Seat at the Table
 - Tax should be involved up front and in the strategy sessions
 - Meet with key executives to understand strategy (both short and long term)
- Investment Committee
 - Tax should attend and participate in IC meetings and review summaries and presentations before they are submitted to the full IC
- Communicate Early and Often with Deal Teams
 - Understand the pipeline (acquisition and sell side – including whether any assets to be acquired will be sold shortly after)
 - Voice concerns and solutions

Tax Due Diligence Leading Practices

Acquisition Side

- What are we purchasing?
 - Entities
 - Assets
- Use a checklist (see sample checklist in Appendix)
- Consider how technology can help – so you can focus on the issues
- Three primary work streams – each impacts the others
 - Due diligence
 - Structuring
 - Documents

Tax Due Diligence Leading Practices

Entity Acquisitions – Key Items to Review

- Leases
- Property services questionnaires
- Organizational chart / entity tax elections
- Tax audits
- Uncertain tax positions (federal, foreign, state, and local)
- Tax attributes / limitations
- Pro forma impact to REIT asset, income and distribution tests
- E&P
- Potential step-up or down in tax basis and allocation of purchase price
- Transaction taxes (transfer taxes, property taxes)
- Funding structure
- Non-income taxes (sales and use taxes, payroll taxes)
- Potential 280G implications
- If target is a JV interest – partnership agreements and ability to be REIT-friendly
- If target is a REIT – REIT tests!!!

Tax Due Diligence Leading Practices

Asset Acquisitions – Key Items to Review

- Leases
- Property services questionnaires
- Pro forma impact to REIT asset, income and distribution tests
- Potential step-up or down in tax basis and allocation of purchase price
- Transaction taxes (transfer taxes, property taxes)
- Funding structure

Tax Due Diligence Leading Practices

Disposition Side

- What are we selling?
 - Entities
 - Assets
- Be “diligence-ready” and understand tax implications
- Three primary work streams – each impacts the others
 - Due diligence
 - Structuring
 - Documents

Managing Built-in Gains

C-Corporation Built-in Gains

- Retain Assets for Built-in Gain Time Frame
 - Maintain a schedule of Built-in Gain by asset
 - Monitor and communicate the changing time frames
- Use C-Corporation NOLs to Offset
- Structure to Defer the Gain – i.e., Section 1031
- Other Non-recognition Structures
 - Joint venture structure
 - Deferred finance lease

Managing Built-in Gains

General Built-in Gains

- Structure to Defer the Gain
 - Section 1031
 - Installment sale
- Other Non-recognition Structures
 - Joint venture structure
 - Deferred finance lease
- Manage through Taxable Income
 - Structure to “fill the bucket”
 - Tangible property regulations
 - Cost segregation studies
 - Depreciation methods

Managing Built-in Gains

General Built-in Gains (continued)

- Manage through Distributions
 - Elective stock dividends in lieu of cash
 - Retain REIT taxable income
 - Pay tax on the 10%
 - Retain capital gains
 - Pay tax at 35%
 - Pass the gain and credit for tax to shareholders
 - Throw back dividends under section 858
 - Monitor potential 4% excise tax

Internal Controls in the Tax Function

REIT Status – Key Controls

- Review Processes / Flowcharts / Memos at beginning of the year
- Communication policy with Property Management and Senior Management
 - They know who you are (senior members of tax team)
 - They know when to call you (executive training)
- REIT Governance Committee
 - Tax Department discusses the test results with Executive Team

Documentation and Procedures

- Internal audit -- active and engaged throughout the year
- Consider technology solutions to facilitate effective and efficient review
- Advisors review REIT tests quarterly and annually
- Documentation requirements, scope, and level of evidence required
 - Proof of internal review, including review notes and sign-off
 - Memoranda (e.g., tax impact of transactions, REIT diligence procedures and conclusions)

Internal Controls in the Tax Function

REIT Status Controls (continued)

- Completion of REIT tests and documentation
 - Separate internal preparation and review roles required
 - Challenges
 - Asset tests
 - Reconciliation of US GAAP amounts to asset values used in the asset test
 - Income tests
 - Review new leases (if not standard) and property surveys
 - Quarterly review of revenue accounts
 - Reconciliation of US GAAP amounts to gross income used in income test
 - Distribution test
 - Quarterly review of current and projected REIT taxable income

Internal Controls in the Tax Function

Tax Provision Key Controls

- Review tax rate reconciliation; compare to previous year and to expectations for the current year
- Review tax account roll-forward schedule and reconcile tax payments, tax accruals, and return to provision adjustments
- Review balance sheet accounts for new accounts or unusual changes for potential new temporary differences

Documentation and Procedures

- Internal Audit – active and engaged throughout the year
- Consider technology solutions to facilitate effective and efficient review
- Documentation requirements, scope, and level of evidence required
 - Proof of internal review, including review notes and sign-off
 - Memoranda (e.g., valuation allowances, purchase accounting, tax impact of transactions, diligence procedures and conclusions)

Internal Controls in the Tax Function

Other Audit-Related Topics

- Entity and/or country level forecasts
- Forecast effective tax rate for current year and long term
- Foreign countries – can add significant effort and challenges
 - Outsource versus internal resources
 - Controls and reliance on external resources
 - Monitoring multiple country tax law changes
- Footnote disclosures
 - Procedures and controls for documentation
 - Recent developments

This presentation contains general information only and the respective speakers and their firms are not, by means of this presentation, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. The respective speakers and their firms shall not be responsible for any loss sustained by any person who relies on this presentation.