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M&A and Other Structured Transactions: Key Accounting and Tax Considerations

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Agenda

Alternative Energy M&A
Market Overview

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Industry Specific M&A
Tax Considerations

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Alternative Energy M&A Market Overview



Key Market Activity Drivers

- Expiring tax credits led to increased development / construction activity in last few years
- US wind developers that started construction on projects prior to 2015 now have until the end of 2016 to place them in service for PTC, which Congress renewed Dec 2014 before it lapsed at yearend
- Distributed solar generation projects getting mainstream
- Developers seeking cash to complete construction projects and looking to take some money off the table / cash in

Key Market Activity Drivers

- Infrastructure and utility investors continue to like the long term steady returns of renewable assets
- YieldCos fuel M&A demand

Headwinds/Game Changers Could Have Impact

Headwinds

- Tax policy uncertainty
- Utility solar fees; competition
- RPS challenges
- Concern about integrating variable renewables to grid
- Flat electricity demand growth
- Interconnection challenges/cost

Game Changers

- Electricity storage already beginning to change the game
 - Financial innovations
- Growth of distributed solar



Tax Policy Uncertainty Will Lend Short Term Support – Along with Other Federal Initiatives

- ITC/PTC – deal activity will be brisk in next 2 years, as:
 - Solar – activity will rise pending 2017 ITC step-down
 - Wind – large pipeline of PTC-eligible projects will create M&A opportunities
- Clean Power Plan – If approved, states will be required to cut CO₂ ; renewables are one of 4 critical “building blocks”
- Other Clean Air Act rules, such as CSAPR and MATS, depending on court rulings
- US-China Climate Accord – US pledged to cut CO₂ more than 25% by 2025, with incentives for wind and solar development



State Policies and Initiatives Will Continue to Encourage Renewable Growth and Deal Activity

Regulatory reform will spur new business models and renewable growth – i.e. NY REV, MN value of solar

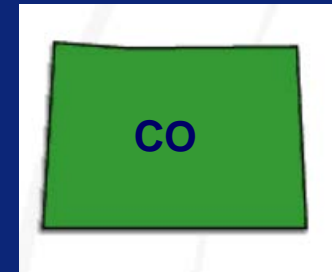


State green banks will continue to expand – i.e. NY, CT, MA, HI, CA, and others + resilience fund in NJ





RPS expansion - CA will continue to lead the way, with proposed expansion of RPS to 50% by 2030


RPS backlash unlikely to make significant inroads beyond OH, WV. CO repeal attempt recently failed



Financial Innovation and Declining Costs Will Pave Way as Renewables Move Into Mainstream

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- **Independent Power Producers (IPPs)** will likely continue to lead the charge as they acquire assets to feed YieldCos, especially prior to tax credit deadlines

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- **Utilities** will rival IPPs as they seek to replace retiring capacity, diversify generation portfolios, and comply with environmental mandates

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- **Financial institutions (FIs)** will also step up activity for steady cash flows, tax advantages, and as assets become increasingly mainstream and capital increasingly available

Public will accelerate investment into the industry as new avenues open and proliferate, such as yieldCos and crowdsourcing

Improved Storage Technologies Will Gain Traction, Aiding Renewable Grid Integration

- Electricity storage is already being used across the grid, as one of several options to smooth the effects of variable resources like wind and solar
- Storage technologies like batteries are gaining traction quickly, as performance improves and costs decline, which is good news for renewables
- Energy storage growth is projected to “explode” from 0.34 GW in 2012-2013 to 6 GW by 2017 and over 40 GW by 2022*



* Source: IHS

Industry Specific M&A Tax Considerations



Tax Step 1 – Identify Target

Key tax due diligence considerations depend on:

- Transaction type
 - Stock/interest purchase
 - Asset purchase
- Classification of target entity
 - C-corporation/S-corporation
 - Partnership
 - LLC

Overall Structure Considerations

Taxable Asset Purchase

- Buyer's preference
- Buyer gets FMV tax basis in assets
- Historical liability stays with seller
- May increase structuring flexibility
- Usually a double level of tax for seller
- May be difficult to execute
- May incur additional transfer taxes

Taxable Stock Purchase

- Seller's preference (if transaction isn't tax-free)
- Usually single level of tax for seller unless a subsidiary of consolidated group
- Historical liability transfers to buyer
- Buyer gets carryover tax basis in assets
- Tax attributes generally carryover, subject to limitations
- Joint election can be made to obtain additional tax benefits resulting from a higher tax basis of assets for the buyer

Overall Structure Considerations

ITC/Grant Recapture considerations

- a) Mere change in form with substantial interest
- b) Partnership 1/3, 2/3 rule
- c) “Disqualified Persons”
- d) Blocker corporation

Overall Focus Areas

1. Tax history/examination status
2. State income taxes
3. Tax accounting methods
4. Hedging
5. Non-income taxes
 - a) Sales/use tax
 - b) Property tax
 - c) Employment/payroll tax
 - d) Environmental taxes
 - e) Transfer taxes

Industry Focus Areas

1. Tax credits – qualification, supporting calculations, aggressive positions
2. AMT – tax credit utilization under section 38
3. Assets tax basis – 263A capitalized costs, PPA on historic acquisitions
4. Tax equity structures
 - a) Compliance with safe harbor / guidance
 - b) Proper modeling
 - c) Proper elections made
 - d) Indemnity provisions – who bears tax and CF risks?

Industry Focus Areas

5. NOL – Section 382 limitations (if applicable)
6. Affect of transaction on tax equity structures
 - a) Change in control
 - b) Technical terminations / Gross up payments
7. International tax
 - a) Structuring
 - b) Repatriation planning
 - c) FIRPTA

Industry Focus Areas – State & Transactional

1. Income/Franchise Tax
 - a) Historic attributes
 - b) State apportionment
2. Property Tax
 - a) PILOT/Abatements
 - b) Change in control affects (i.e., CA property tax exemption)
3. Sales/Use Tax
 - a) Exemptions
 - b) Asset vs. intangible LLC interest
4. Transfer Tax

Common Tax Issues in a YieldCo Transaction

- Formation Transaction
 - Section 704(c) allocations
 - Disguised Sale Considerations
 - Pre-formation capex
 - Qualified Liabilities
 - Taxable v Non-taxable exchanges / “cherry picking”

Common Tax Issues in a YieldCo Transaction

- Projected cash tax yield
- Projected distributable cash
 - Accurate reflection of reserves
 - Decommissioning costs
 - Capex spend
- E&P calculations (taxability of distributions)
- Corporate AMT diligence & analysis
- Feeding the YieldCo / refreshing the tax shield

Common Tax Issues in a YieldCo Transaction

- Lower tier flip partnerships
 - Accurate reflection of LTP base case modeling and actuals in YieldCo modeling
 - Lumpy cash flows
 - Modeling delayed flip / P90 risk
 - Potential Section 743(b) adjustments on formation and recovery
- Non-US projects – repatriation planning, FTC allocation and utilization

Industry Specific M&A Accounting Considerations



Select Accounting M&A Focus Areas

- HLBV Accounting Requirements
- Derivative transactions (risk management activities) and potential hedge accounting treatment
- Accounting for Purchase Power / Sales Agreements
- Lease accounting (consideration of EITF 01-8 and FAS 13)
- FIN 46R considerations
- Emission credits and other carbon considerations
- Regional independent system operator rules, interconnection agreements, billing true-ups
- Equity method investments and non-regulated operations
- Inventory – Appropriateness of levels, obsolescence

Select Accounting Diligence Focus Areas

- Depreciation – policy differences
- Purchase price allocation fair value estimates:
 - Intangible assets, including power purchase and fuel supply agreements
 - Debt
 - Non-regulated operations and equity method investments
 - Property, plant & equipment
 - Estimated impact of depreciation and amortization on reported earnings
- Capitalization policy / limits, treatment of capital spares inventory
- Accounting for major maintenance
- Allowance for doubtful accounts

Other Operational Diligence Focus Areas

- Related party transactions / transfer pricing
- Government grants
- Insurance considerations
- Impact of regional energy policy and expected developments (uniformity, competition), trading markets
- Corporate functions and overheads
- Regulatory environment (including rate base considerations)
- Collaterals and guarantees
- Production capacity and utilization
- Investment – growth and maintenance capital expenditures
- Potential for efficiency savings
- Regional power market
- Reliability of assets

Other M&A Accounting Considerations

- Goodwill in the acquisition of a wind or solar plant
- Intangible Asset (e.g. PPAs) valuation considerations
- Cash Flow classifications considerations
- Push Down Accounting
- Transactions under common control
- Asset Acquisition or business combination



Questions?



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