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Tax Equity Structures and Solutions for Today's Renewable Projects

March 3 - 4, 2021 | 8:30 AM - 2:55 PM PST | Digital Access

All times listed are Pacific Standard Time

March 3, 2021

8:25 – 8:30 am

Introduction and opening remarks

8:30 - 9:00 am

Session 1: Understanding Federal Tax Incentives and the Situation Now

Structuring the tax equity portion of renewable project financings to attract investors and optimize the economic benefits to the project has always been a difficult task, but that has been compounded in 2020. This session will review:

- Who can be a tax equity investor?
- What tax incentives are available for renewables projects?
- How the step-downs of the ITC and PTC, as well as the ongoing COVID-19 crisis, are affecting the rules of the road.

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

9:00-9:15 am

Live Q&A

9:15-9:20 am

Transition/Break

9:20 - 10:25 am

Session 2: Partnership Rules and a Focus on Capital Accounts

This session will take a deep dive into partnership and LLC tax issues, and how they are incorporated into legal structures for renewable projects.

Issues addressed include:

- What do you need to know about capital accounts?
- Inventory Account of Electricity, Allocation of Tax Credits and Capital Account Profiles of Wind, Solar Yield and Solar Time flip structures
- Leases, loans and service contracts: how do you determine ownership for tax purposes?
- How can you better understand more complex partnership issues?
- What do you need to know to assess economic substance and its implications for tax equity structures?
- How debt fits into the equation

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

Bill Fisher, *Managing Director*, DELOITTE TAX LLP

10:25-10:40 am

Q&A

10:40-10:45 am	Break/Transition
10:45 -11:30 am	<p>Session 3: Understanding and Implementing Capital Structures for Renewables Partnership Flip</p> <p>Partnership flip structures and transactions are both widely used and among the most difficult to craft in the project finance world. This session will discuss the three main types of partnership flip structures, how to tailor these structures to meet the needs of investors while optimizing the economic benefits to projects. Practical implementation of key concepts will be illustrated through walk throughs for both wind and solar projects.</p> <ul style="list-style-type: none"> ● Typical flip structures: what are they and what do they look like for wind and solar projects? ● Walk Through of example structures and economics ● Exit strategies: how do you form them and what do they look like? <p>Shariff Barakat, <i>Partner, Project Finance</i>, NIXON PEABODY LLP Bill Fisher, <i>Managing Director</i>, DELOITTE TAX LLP</p>
11:30-11:45 am	Q&A
11:45 am-12:30 pm	Lunch Break
12:30 - 1:05 pm	<p>Session 4: Walkthrough of Partnership Flip Models</p> <p>This session will walk through some partnership flip models to illustrate how the concepts in the sessions above are applied in financial projections.</p> <p>Shariff Barakat, <i>Partner, Project Finance</i>, NIXON PEABODY LLP Bill Fisher, <i>Managing Director</i>, DELOITTE TAX LLP</p>
1:05 - 1:20 pm	Q&A
1:20 - 1:25 pm	Break/Transition
1:25 - 1:55 pm	<p>Session 5: Understanding and Implementing Capital Structures for Renewables Inverted Lease</p> <p>The inverted lease or lease pass-through is a unique structure that is being increasingly used in solar and other project financings. This session will explore its usage, and work through developing these structures through detailed walk throughs.</p> <p>Issues addressed include:</p> <ul style="list-style-type: none"> ● What are the advantages and disadvantages of inverted lease structures? ● Walk Through Rev. Proc. 2014-12 ● What are the risks in inverted lease structures? <p>James Duffy, <i>Partner</i>, NIXON PEABODY LLP Michael J. Goldman, <i>Partner, Project Finance, Infrastructure & Real Estate Department Head</i>, NIXON PEABODY LLP</p>
1:55 - 2:10 pm	Q&A
2:10 - 2:15 pm	Break/Transition

2:15 - 3:10 pm

Session 6: **GAAP/IFRS Financial Accounting**

Handling the financial accounting for Tax Equity transactions is not intuitive, and requires the use of unique, specialized processes. This session will help attendees become familiar with the general fundamental accounting framework for tax equity transactions, their underlying rationale and intent in order to avoid financial problems.

- Walk through an example of HLBV (hypothetical liquidation at book value)
- What the other potential accounting methods are available?

Bill Fisher, *Managing Director*, DELOITTE TAX LLP

Adam Nicholson, *Partner, Audit and Assurance Services*, DELOITTE & TOUCHE LLP

3:10 – 3:25 pm

Q&A

3:25 – 4:25 pm

Virtual Networking

March 4, 2021

8:30-9:05 am

Session 7: **Tax Equity Documentation**

This session will familiarize attendees with the primary legal documents, technical reports and other deliverables involved in a tax equity transaction. This will enable deal participants to know where to look for and quickly identify if desired contractual items are included.

- Understanding what the key documents are for tax equity transactions and their key elements:
 - ECCA (equity capital contribution agreement)
 - LLCA (limited liability company agreement)
 - Sponsor guarantee
- Where to look for specific funding conditions, indemnities, and transaction details:
 - Equity contract
 - Project representations
 - Flip mechanics
 - Transfer mechanics

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

9:05-9:20 am

Q&A

9:20-9:25 am

Break/Transition

9:25-10:05 am

Session 8: **Appraisals for Projects that Generate ITCs**

This session will help attendees understand how tax insurance can be used to enhance the bankability of a project, attract tax equity and firm up balance sheets, and this session will also provide a deep dive into appraisal and tax basis risk, including:

- Why do appraisals matter for tax equity? What is “tax basis” risk?

- What do the recent court cases mean for deal structures today and in the future?

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

10:05-10:20 am

Q&A

10:20-10:25 am

Transition/Break

10:25-11:10 am

Session 9: Understanding “Begun Construction” and an Update on Safe Harbor Rules and Strategies

Given the stakes involved, getting one’s safe harbor strategy right and making sure it is executed well is critical. This session will look at what safe harbor strategies are being adopted and how they are being operationalized. It will address such questions as:

- Understanding the 5 percent safe harbor standard
- What are the leading strategies?
- On-site and off-site physical work including transformer strategies
- What are the risks associated with these strategies?
- What are the long-term risks?
- What are the constraints in execution?
- What are the trends in Treasury/IRS regulation?
- Update on Covid-19

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

11:10-11:25 am

Q&A

11:25-12:15 pm

Lunch Break

12:15-12:50 pm

Session 10: Hybrid Projects: Handling Tax and Structuring Issues with Solar + Storage Projects

Adding storage to solar or other renewable energy projects significantly increases the complexity of incorporating tax equity investment in financing structures. This session will explore some of the factors that should be considered, including:

- How does storage with solar qualify for the ITC?
- How will the charging source affect capture of ITC benefits?
- What are the advantages of DC-coupled vs. AC-coupled inverter technologies?
- What is the potential for tapping different sources of tax equity for solar vs. storage project components?

Shariff Barakat, *Partner, Project Finance*, NIXON PEABODY LLP

Joshua Rogol, *Senior Vice President, Energy Storage*, STRATA SOLAR, LLC

12:50-1:05 pm

Q&A

1:05-12:10 pm

Break/Transition

1:10-1:35 pm

Session 11: Tax Insurance

In this session, we will discuss the use of tax insurance in a tax equity transaction. Attendees will learn to understand the process, pricing and other basic terms and process of obtaining and making a claim under tax insurance, including:

- What are the tax risks that are most conducive to being insured?
- What are the common terms and exclusions in tax insurance policies?
- Use of tax insurance by sponsors, tax equity investors and back-leverage investors
- Dealing with key insurance tax equity risks
- Process for obtaining tax insurance
- Tax insurance case study

Jordan Tamchin, *Senior Vice President, Tax Insurance Practice Leader, CAC SPECIALTY*

1:35-1:50 pm

Q&A

1:50 – 2:05 pm

Break/Transition

2:05-3:05 pm

Session 12: **Office Hours: Interactive Live Zoom Session**

This Interactive Live Zoom Session at the class conclusion allows you to get your most pressing questions answered, and to interact with Master Class Instructors in real time.

Shariff Barakat, *Partner, Project Finance, NIXON PEABODY LLP*

3:05-4 pm

Virtual Networking