



IPO Readiness for Energy Companies

March 2, 2017



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Pre-IPO Tax Considerations

Financial statements
Tax structure
Due diligence
Other considerations



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Financial Statements

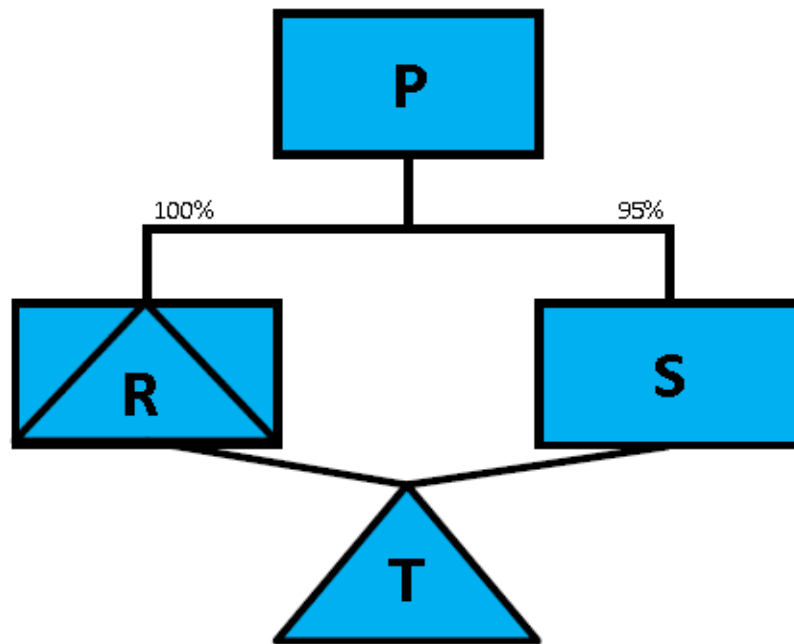
- Evaluate tax personnel/processes
 - Assess who, if anyone, has been preparing your computations under ASC 740
 - Determine if this expertise is available internally
 - Consider engaging a third party
 - May require historical preparation of provisions
 - Implement internal controls/processes for meeting tax compliance and reporting requirements as a public company

Financial Statements

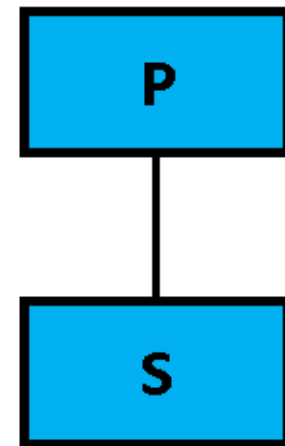
- Get financial statements in order
 - Identify uncertain tax positions – those not “more likely than not” to be sustained if challenged - and address/document
 - Analyze deferred tax assets (DTA) and liabilities (DTL)
 - May not have recorded if flow-through prior to IPO
 - Substantiate DTAs and DTLs
 - Substantiate DTA related to NOLs and credits and consider limitations as a result of ownership changes
 - Review DTAs under “more likely than not” criteria and record valuation allowance (VA) if necessary

Tax Structure of the IPO Transaction

In general, simpler is better.



Before



After

Tax Structure of the IPO Transaction

- Before you start restructuring, make sure to talk to your tax advisors!
- S corporation
 - IPO will likely terminate S status
 - Last S corp year ends on day before IPO and first C corp year begins on day of IPO
 - Generally, accounting methods carry over
 - Limitations on use of cash method as C corp
 - Accumulated Adjustments Account (AAA) – must be distributed to shareholders within 12 months of termination of S status; should be declared prior to IPO
- LLC
 - Generally I.R.C. §351 transaction to incorporate
 - Accounting methods generally do not carryover
 - New C corp adopts new methods prospectively
 - Exception – depreciation methods generally carryover to extent of tax basis carried over

Due Diligence

- Have all required federal, state or foreign returns been filed?
 - Income tax (1120/various state forms)
 - Excise tax (720)
 - Sales/use tax (withholding certificates)
 - Payroll tax (940/941)
 - Pension plans (5500)
 - Withholding tax
 - Information returns (Forms 1099, W-2, 5471, 5472, 1042, FinCen, etc.)

Due Diligence

- What do you do if you identify compliance failures?
 - Closing or compliance agreements (state VDAs)
 - Reduced penalty framework
 - Restore compliance history
 - Penalty abatement requests
 - Delinquent filings

Due Diligence

- Any open IRS, state or foreign examinations?
 - Timeline to completion?
 - Can/should timeline be accelerated?
 - Be aware of amended return rules
- Audit vulnerabilities? Issues of interest to tax authorities?

Other Considerations

- NOLs
 - Could be limited if “ownership change” upon IPO
 - Plan in advance of IPO possible utilization of NOLs, if expecting significant limit
- Earnings & Profits (E&P)
 - Post IPO, possibility to distribute dividends in future
 - Distributions are dividends to extent of E&P
 - Must advise shareholders if return of capital or taxable dividend
 - Requires E&P study – consider performing for historic periods prior to IPO
- Management incentives
 - 162(m) – limitation on compensation paid to certain named executives
 - 280G – golden parachutes



IPO Disclosure Considerations

S-K 1200 disclosures
Expanded financial statement disclosures
Auditor independence and related issues



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S-K 1200 disclosures

- Located in Item 1 – description of properties
- Tabular disclosure of reserves information
- Discussion of internal controls used in the reserves estimation effort, including third-party preparation

S-K 1200 disclosures

- Discussion of PUD reserves
 - Material changes during the period
 - Investments and progress made to develop
 - Reasons for continuing to report PUDs for more than five years from initial booking

S-K 1200 disclosures

- Production, prices and costs
- Net productive and dry exploratory and development wells completed during the year
- Present (means subsequent) activities
- Delivery commitments

Expanded Financial Statement Disclosures

- Earnings per share
- Income taxes
- Disclosures about oil and gas producing activities
- Unaudited condensed pro forma information on significant acquisitions

O&G Producing Activities

- Capitalized cost
- Results of oil and gas operations
- Costs incurred
- Rollforward of total proved reserves
- Proved developed reserves
- Narrative explanation of significant changes in reserves

O&G Producing Activities

- Standardized Measure of Oil and Gas reserves (SMOG)
- Changes in SMOG

Auditor Independence Issues

- Convert GAAS audits to PCAOB audits
- Impact of non-attest services
 - Preparation, or assistance in preparation of financial statements
 - Income tax provisions
 - Other prohibited non-attest services
- Impact of non-attest services provided to affiliates
- Partner rotation issues



Other Financial Statements

- Predecessor issues
- Significant acquisitions
 - Significance tests – assets, investments, and income
 - Historical summaries versus full financials
 - Seller participation implications
 - Pro forma presentation requirements

Comfort Letters

- Underwriter's due diligence performed by auditors
- Typical issues:
 - Numbers the auditor cannot comfort
 - Participation of more than one audit firm
- Additional matters:
 - Reviews of interim financial information
 - Limited procedures on subsequent periods
 - Reading of minutes and other inquiries of mgmt.

Contact Information



Lori Mettill
Partner

lmettill@heincpa.com

(972) 687-7847



Joe Blice
Partner, Director of Audit Quality

jblice@heincpa.com

(972) 687-7818

