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Focus: Banks and their tax resolutions for 2016

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With 2015 now closed and in the books and the 2016 first quarter closing not yet in process, now is a great time for banks to consider alternatives that might help improve their tax positions. While tax planning is not limited to these particular strategies, the following suggestions provide a foundation for reducing tax expense and improving the institutional tax risk profile for 2016 and beyond.

• Low Income Tax Credits (LITC) are not widely used in community banks, but the somewhat recent FASB ASU 2014-01 directive allows the entire investment to run through tax expense. This is profoundly different from how other credits impact your financial statements, which more closely aligns the accounting with the economics of the investment.

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• Solar and Investment Tax Credits (ITC) can be combined with recent improvements in the "Section 179" accelerated expense to make solar very attractive to a bank. It is now even more feasible for banks to invest in their own solar projects or to consider participating in syndications of large solar credit projects.

• The Research & Development (R&D) Credit can also provide a material reduction in cash tax expense. Prior to recent surges in technology improvements and ID theft risks, banks were not considered good R&D credit opportunities, but this is now more logical — especially given increasing investments in IT departments.

• Film tax credits are another limited risk investment for banks. Massachusetts has had a mechanism for exchanging film credits for years, and the process is not complex.

• There have been a series of state tax changes in both apportionment and sourcing rules which might have a significant impact on bank tax rates. Depending upon where underlying property is located, revised nexus statutes could expose banks to tax in new jurisdictions not previously subject to tax. As states continue to compete for revenue, banks should remain vigilant of other state law changes that may subject them to higher taxes.

• There has been much litigation about tax loss sharing agreements between bank holding companies and their operating subsidiaries, with specific OCC requirements released in 2014. The key is to review the existing agreement for conformity to OCC regulations and be aware of the potential issue.

• While not a specific tax on banks, every bank executive and officer should be aware of the higher tax attributable in Massachusetts to gift, estate, and trust transactions — key for banks with high net worth customers — in order to help customers plan for maximum tax efficiency.

• Ever-increasing attention is also required for a variety of "lesser" tax reporting areas. There are new pension plan reporting requirements which require increased testing and information reporting as well as increased data capture, tracking, and reporting under the Affordable Care Act, which comes with a stronger tax penalty for failure to comply. Other similar potential traps include continued scrutiny on independent contractors relating to W2/1099 reporting by state and federal agencies, possible FICA exposure on non-qualified retirement plans and poorly designed benefit plans. We have even seen increased audit activity around meal and auto allowance tracking and reporting.

So, banks should make it a point to review and assess their tax expense before 2016 gets away from us. There is plenty of time to maximize your institutional tax exposure.

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