

# Real Estate Tax

Our Tax attorneys have substantial experience advising on tax issues that arise in real estate transactions. Our experience ranges from providing tax counsel in connection with fund formation for real estate funds to tax planning for investments by a non-U.S. party's real estate fund and individual real estate projects to negotiating tax provisions of joint venture agreements.

In addition, our tax practice professionals have a broad range of experience working with development funds seeking treatment as a qualified opportunity zone fund. We also advise on the use of the Delaware Statutory Trust (DST) structures in both traditional offerings of DST interest to like-kind exchange investors and nontraditional situations where an existing real estate fund is seeking to raise convertible capital from like-kind exchange investors.

Working closely with Polsinelli's national real estate practice members, our tax attorneys provide tax planning advice on real estate transactions throughout the United States.

## **Tax Planning for Real Estate Funds**

In connection with the formation of a real estate fund, tax planning is one of the more important parts of the process. Our Tax attorneys work on an integrated basis with members of our funds' practice in identifying the appropriate structures for optimizing the tax benefits available in a real estate fund. The tax practice is deeply involved in the fund formation process including matters involving implementing strategies for maximizing capital gain treatment in respect to interests in the fund held by affiliated of the fund's sponsor or drafting various tax provisions of the fund document to avoid the acceleration of income.

## **Tax Planning for Foreign Investment in U.S. Real Estate**

Our Tax attorneys advise both U.S.-based real estate funds and foreign investors in developing the appropriate structures to facilitate investments by foreign investors in U.S. real estate projects on a tax-advantaged basis. The tax practice regularly provides U.S. tax advice on the use of leveraged blocker corporations and structures designed to maximize the use of "portfolio interest" in transactions involving the investment in capital in U.S.-based real estate by foreign investment funds, high-net-worth investors based outside of the United States and other foreign investors.

## **Tax Planning for Real Estate Joint Ventures**

In many real estate joint ventures, the negotiations related to the parties' allocation of tax benefits are critical to the venture's success. Members of the Polsinelli tax practice have significant experience in the complexities of the U.S. income tax rules that apply to limited liability companies (LLC), limited partnerships (LP), statutory trusts and other flow-through entities that are typically used in joint ventures involving the development of real estate. In addition, our Tax attorneys represent clients throughout the United States in developing tax-advantaged

structures for the disposition of the underlying real estate and in situations involving the buyout of a joint venture partner.

## **Complex Like-Kind Exchanges and Delaware Statutory Trusts**

In many cases, a deferred like-kind exchange can be a straight-forward transaction. However, some circumstances, such as the use of various structures by multimember limited liability companies (LLC) to facilitate member exchanges, can make it complicated. Similarly, using like-kind exchange compliant structure to facilitate the investment using like-kind exchange proceeds through a co-investment structure can also open a new source of capital. Our Tax attorneys have advised clients on the use of both the tenancy in common (TIC) structure or the Delaware Statutory Trust (DST) in traditional drop and swap structures, real estate offerings structured as DSTs and in nontraditional structures using a 1031/721 approach.

## **Tax Planning for Distressed Real Estate Work-Outs and Recapitalizations**

One of the many issues to consider in a distressed real estate situation is the income tax costs that could arise in the various alternative solutions being considered. Our Tax attorneys have worked with both owners of distressed real estate and with parties looking to recapitalize the distressed real estate by investing capital in developing tax-oriented strategies to minimize the tax costs that can arise. In addition, distressed property situations involving property owned in the DST structure where the adoption of typical work-out strategies can create adverse income tax results if those strategies are not implemented properly, members of our tax practice have significant experience in adopting various strategies to maximize the benefits of the like-kind exchange rules of Code Section 1031 in these special situations.

## **Opportunity Zone Funds**

In 2017, when opportunity zones were included in the Internal Revenue Code, we assembled a group of attorneys from our real estate, tax, securities and corporate practice areas to form a dedicated working group to help our clients determine the right approach to utilizing the opportunity zone structure. Our tax practice has represented clients in opportunity zone transactions involving more than \$1 billion of transaction value.

# Matters

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- Provided tax advice to one of the largest privately held real estate firms in connection with a \$300 million recapitalization of its student housing business.
- Represented developer in connection with \$200 million multi-use development in an opportunity zone in Salt Lake City, Utah. Provided advice on general tax matters and opportunity zone-compliant structure.
- Representing a private equity sponsor in connection with a \$500 million opportunity zone development in Nevada, ultimately encompassing 2000 acres and including manufacturing and warehouse facilities. The first project is an 800,000-square-foot industrial facility. Provided tax and opportunity zone advice as part of our general representation of the sponsor.
- Providing advice on opportunity zone structuring in connection with a \$700 mixed-use development in Phoenix, Arizona.
- Polsinelli provided a client Tax and Opportunity Zone structuring advice and an Opportunity Zone Opinion for a \$63 million Class A mixed-use property. The property is located in Salt Lake City, Utah and consists of 170 residential units and 10,100 square feet of retail space within an eight-story type III over type I structure. The mixed-use development will be spurring on valuable community development.
- Implementation of DST Program – Assisted Mid-West Based Real Estate Company in the raise of like-kind exchange capital through the use of a Delaware Statutory Trust Structure. Provided tax planning for the implementation of a capital raise of \$50 million for a multifamily real estate fund which allows investors to use like-kind exchange proceeds on a pre-tax basis to satisfy a portion of their capital commitments.

- Provided tax and structural advice to a real estate fund seeking to raise \$50 million in equity to purchase multifamily properties in establishing a structure through which investors could use proceeds from a prior like-kind exchange under Section 1031 of the Code to acquire an investment interest in the fund.
- Provided tax and Opportunity Zone (OZ) advice to assist a client with a \$3 million OZ investment for a 25% interest in a marketing company operating in qualified opportunity zone census tracts.
- Provided New Markets Tax Credit (NMTC) counsel to our client, a nonprofit and the nation's largest organization dedicated to inspiring and preparing the youth to succeed in a global economy through enriching learning experiences that promote greater economic opportunity and equity. Our attorneys advised our client on a \$6 million NMTC allocation, ensuring total compliance in the large transaction.
- Counseled a client to maximize its participation in the Opportunity Zone (OZ) program in an approximate \$1 million transaction. By providing valuable tax and opportunity zone advice, our client was able to move forward with plans for a new building that will operate as an affiliates' headquarters.
- Advised a client related to Opportunity Zone (OZ) benefits and Qualified Opportunity Fund (QOF) formation. The counsel enabled our client to use OZ and QOF as an investment vehicle into a cross-platform AdTech company that makes advertising perform better by using signals in the physical world to trigger real-time actions across search, social and shopping platforms.
- Provided client Tax and Opportunity Zone structuring advice and an Opportunity Zone Opinion for a \$32 million retail and office space redevelopment transaction in Detroit, Michigan.
- Advised a client, who brings together funding, technology and strategic partners, to invest in innovative and high-impact projects across the United States regarding Tax and Opportunity Zone structuring advice and an Opportunity Zone Opinion. Polsinelli provided our client guidance on a \$96 million retail and office space redevelopment transaction in Salt Lake City, Utah.
- Advised a private real estate investment company specializing in the ground-up development and acquisition of multifamily, office and retail properties in gateway markets across the United States on specifics related to Tax and Opportunity Zone structuring advice for a \$31 million project mixed-use project in Phoenix, Arizona.
- Advised a private real estate investment company specializing in the ground-up development and acquisition of multifamily, office and retail properties in gateway markets across the United States regarding Tax and Opportunity Zone structuring for a \$300 million project with \$123 million Opportunity Zone equity that will have 250,000 square feet of office space, 736 apartments, and 5,000 square feet of retail in Scottsdale, Arizona.
- Provided Tax and Opportunity Zone structuring advice for a \$49 million project with 295-unit apartment building and 14 for-rent townhomes in Charlotte, North Carolina.
- Provided Tax and Opportunity Zone structuring advice for a \$42 million 215-unit residential project in Colorado Springs, Colorado.
- Represented an innovative global real estate investment management company in connection with the recapitalization of the company and an investment of approximately \$300 million immediately and ultimately up to \$1.6 billion by an affiliate.