

Vantage Viewpoints

How the Tax and Legal Departments Work Together to Add Value

By Randy Short and Marc Simonetti

In this issue's Vantage Viewpoints, Randy Short, Vice President, Taxation, at The New York Times Company, answers Sutherland Tax Partner Marc Simonetti's questions about The New York Times Company's Tax Department. Winner of the 2010 International Law Office.com Global Counsel Award for Corporate Tax Individual of the Year, Randy delves into how the tax team contributes to the company's profitability and describes the manner in which the tax staff and legal division collaborate on projects.

Send your questions for the Vantage Viewpoints section to partneringperspectives@sutherland.com.



From your perspective, how does the Tax Department add value to The New York Times Company?

The tax team at The New York Times Company adds value to the business in four principal areas: tax planning, tax compliance, tax accounting and tax audits.

- **Tax Planning:** Our role in this area is to structure all federal, state, local and international tax matters in a manner that maximizes the company's utilization of available tax benefits and minimizes our tax liabilities within the confines of the law. While a large portion of our tax planning involves determining the best manner to structure acquisitions and other investments, it also involves items such as interpreting and integrating the effect of changes in tax law.
- **Tax Compliance:** We ensure that the company is in compliance with all federal, state, local and international tax laws. To that end, among other things, we prepare and file all required tax returns and tax reports and ensure the timely payment of taxes to the relevant government agencies.
- **Tax Accounting:** The Tax Department is responsible for computing tax expense for each quarter as well as for the year. These calculations are included in the Forms 10-Q and 10-K filed with the U.S. Securities and Exchange Commission (SEC) and are a critical component of the calculation of earnings per share for the relevant reporting period. The calculation of tax expense is an intricate and involved process requiring detailed knowledge of both the tax laws and the accounting rules.
- **Tax Audits:** The Tax Department handles the tax audits for the company. As a large publicly traded company, and by virtue of the size of our revenues, we are continually subject to audit. We work to keep the audits up to date and to resolve them in a manner satisfactory to the company and the taxing authorities.

In what capacities does the Tax Department interact with the Legal Department?

A principal area of interaction between the Tax Department and the Legal Department involves tax planning and compliance in the context of acquisitions, investments and joint venture formations. The shared goal of both departments is to structure our transactions in a manner that will achieve the company's business goals in the most tax-efficient way and in a manner that will ensure compliance with all applicable laws, including but not limited to the tax laws. Our coordination with the Legal Department in this area generally occurs in four stages: structuring, due diligence, drafting of transaction documents, closing and post-closing compliance.

Structuring

Once the Strategic Planning Department or the Legal Department informs the Tax Department that it is considering an acquisition or other investment, we then work with those departments to determine the best way to structure the transaction from a business, legal and tax standpoint. Proposed transactions often can be structured in many different ways, with divergent tax implications from each alternative. I am grateful that our counterparts in the Legal Department

always ensure that the Tax Department is involved in the process as early as possible so that we address all possible tax issues and leave no stone unturned in determining the most tax-appropriate way to structure the transaction (e.g., stock purchase versus asset purchase).

Due Diligence

Once we have agreed how to structure the transaction, the next step is to conduct our due diligence. The legal team assists the tax team in obtaining the tax information we need from the other parties to the transaction and in responding to requests from the other parties. The information we obtain through the due diligence process enables us to thoroughly evaluate the tax history of the entities involved in the transaction and to identify any items that could be a cause for concern.

Drafting of Transaction Documents

We work with the legal staff to draft the deal documents, which could include but are not limited to asset purchase agreements, stock purchase agreements and partnership agreements. Tax revises the agreements and drafts additional language we want included in the agreements in order to protect the company's interests and to obtain the desired tax treatment.

Closing and Post-Closing Compliance

Lastly, we coordinate with the Legal Department to ensure all closing and post-closing compliance matters are completed. This includes ensuring that any required tax-related documentation is executed at or prior to closing (e.g., transfer tax returns, withholding certificates).

While a large portion of our work with the Legal Department involves acquisitions and other investments, we collaborate with our legal colleagues in many other areas, including employee benefits, executive and employee compensation matters, and financings.

How have you been able to keep a positive working relationship with the Legal Department?

The key to the Tax Department's successful working relationship with the Legal Department is the quality and personal attributes of the staff in both departments. The starting point is the outstanding team of attorneys and accountants we have in the Tax Department. With that said, it is a tremendous asset to have attorneys in the Legal Department who are willing and able to communicate with the attorneys in the Tax Department on complex tax matters and who appreciate that tax considerations are a critical component of and contributor to the company's success.

Importantly, although not tax lawyers by trade, various members of our Legal Department have developed a basic understanding of certain areas of tax law. This enables them to identify when an item may have tax implications and, accordingly, to identify the need to involve the Tax Department. This also enables them to understand, advocate for and implement our objectives from the tax side. Both the tax staff and the legal staff consist of motivated people who communicate intelligently and effectively, are comfortable with each other and put the company's interests first. I am truly thankful to work with such people on a daily basis.

