Timber Income Tax

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Forms of Ownership

Chapter 8
Forms of Ownership

• Fee Simple
• Joint Ownerships
• Partnerships
• “S” Corporations
• Regular “C” Corporations
• Limited Liability Companies (LLCs)
• Trusts and Estates
Partnerships

• Taxation is indirect – i.e., income, credits and deductions are passed through to the partners who are taxed on individual returns

• No double taxation as with C corporations

• Non-corporate rates of 39.6 % apply, which now equal the maximum corporate rate of 35% as phased in by 2003 Act and extended by the 2010 Tax Relief Act

• Partners face unlimited liability and law of agency
Family Limited Partnerships

- General partners may be active, material participants and have managerial control
- Limited partners are passive by definition – and have limited liability and limited management input
- Limited partners risk losing the limited liability status if they become actively involved in the management
“S” Corporations

- No double taxation as with C corporations
- Non-corporate rates apply, which at the 39.6% maximum, now exceed the maximum corporate rate of 35% as phased in by the 2003 Act
- Taxation is indirect – i.e., income, credits and deductions are passed through to the shareholders to be taxed on their individual returns
Some Tax Disadvantages of “S” Corporations

- Earning cannot be accumulated at the corporate level to postpone taxation – they are passed through to shareholders whether actually distributed or not.
- The built-in gains (BIG) tax levied under §1374 may apply to S corporations that were once C corporations – a 35% rate applies to built in gains after S election.
IRC Section 1374

- IRC § 1374 is designed to prevent corporations that had built-in gains on assets during “C” years from avoiding the higher corporate tax by converting to S status for 10 years.
- For many years, IRS took position that S corporations disposing of timber under §§ 631(a) or (b) were not subject to the built-in gains tax.
- There are many private letter rulings on the issue.
Implications For Timber

• IRC § 631 transactions were not sales, but were treated as sales by the IRC as a mechanism to qualify for capital gains.

• That is, timber disposed of under § 631 was treated similarly to mineral interests and did not possess a separate identity until severed from the land.

• IRS put issue on “No rule” list in 1998.
Revenue Ruling 2001-50

- Ruling affirms position set out in series of Letter Rulings with respect to Section 631 transactions
- It covers the situation where the S Corporation cuts its own timber without a 631(a) election, ruling that the BIG tax does not apply
Estate Tax Disadvantage

• Timber held by a S corporation that goes through a testamentary transfer never receives a “stepped up” basis

• Stock shares inherited upon the death of shareholders receive the stepped up basis, rather than the underlying timber assets
Regular “C” Corporations

- Double taxation – earnings are taxed to corporations – dividends are taxed to shareholders
- Dividends currently are taxed as a capital gain
- Maximum corporate rates now equals non-corporate tax rate as phased in under 2003 Act
- Earning can be accumulated to delay tax
- Inherited shares receive a stepped up basis, rather than the underlying timber assets
Limited Liability Companies

- Most LLCs are taxed as partnerships where the same tax rules apply as discussed above
- If LLCs are taxed as corporations, the corporate tax rules will apply
- LLCs are very flexible and the distribution of income can be dictated by the operating rules
- LLCs receive limited liability coverage
Capital Gains

- Non-corporate capital gains rates range from 0% to 20% under most circumstances for timber, with special 0% rate applying to low income taxpayers, 25% rate applies to disposal of depreciated property.

- Corporate capital gains may be taxed as high as 35%.
Trusts and Estates

- The 2010 tax thresholds, which are indexed, for the 25, 28, 33, and 35 percent tax rates begin at extremely low levels -- $2,300, $5,350, $8,200, and $11,200, respectively -- compared to other non-corporate taxpayers

- Low thresholds are indexed, and give little flexibility for accumulating capital

- Moral – distribute earning