

REAL ESTATE: WORKOUTS AND RESTRUCTURING

Making The Best Arrangement

For The ...

Borrower

Buyer of Debt

Lender



With all the old realities gone — low cap rates, high cash flow expectations, plentiful financing options — successfully navigating the uncertainties of the real estate landscape is essential to carving out your best future. Berdon brings expertise culled over nine decades of advising many of the nation's leading owners, developers, investors, and institutions. We have guided clients in transactions of all kinds and sizes through every type of economic environment. We know the people, the practices, *and* the nuances. We're businesspeople as well as accountants and leverage our depth of experience to cut through the tax, financial, and economic points to arrive at practical solutions that work for you.





For The **BORROWER**

Restructuring Your Debt

We help you take a workout from an abstract concept to a tangible reality. Berdon real estate professionals develop models that illustrate the economic and tax implications of the workout.

With an entrepreneur's eye, we work with you to weigh the many factors — including the impact of the workout on your organization and other properties and entities. We assist in bringing together a comprehensive understanding so you can plan your workout and prepare for your post-workout business. In this role, we help you:

- ▶ review the status of your real estate assets to understand current and future conditions
- ▶ generate models to evaluate the expected economic performance of your real estate assets
- ▶ develop and vet approaches that fit the circumstances. In the process, we assist you in evaluating:
 - cap rates, discount rates, and other valuation parameters
 - cross collateralization of assets
 - fixed vs. floating debt
 - interest rate swaps and other hedging options
- ▶ formulate a strategy to approach your lender to resolve the loan. Among those considered:
 - discounted acquisition or payoff of the debt
 - renegotiating or restructuring the existing debt
 - developing new capital structures
 - asset divestiture

- ▶ assess long-term viability of the enterprise
- ▶ devise and implement an enterprise reorganization plan

Working With Counsel

Your legal counsel plays a pivotal role in this process. Berdon professionals have wide experience working smoothly with counsel in constructively and efficiently evaluating the situation, developing an action plan, and following through to implementation.

Tax Factors

The tax treatment of a workout can have far-reaching consequences. With a firm grasp of the implications of the most sophisticated tax principles, Berdon professionals weigh the myriad factors to enable you to understand how a particular treatment will play out. We also provide strategies and alternatives based on what you are seeking to accomplish. Our expertise extends to:

- ▶ the various contours of cancellation of debt (COD) income doctrine
- ▶ COD exemptions and their requirements
- ▶ partnership taxation issues
- ▶ swapping debt for equity and other capital structure strategies
- ▶ original issue discount rules
- ▶ dealing with phantom income
- ▶ foreclosure and deed-in-lieu of foreclosure
- ▶ state and local transfer and other tax issues ■

CLIENT EXPERIENCES

Finding A Way | Our client had an opportunity to retire mortgage debt at a significant discount from the amount outstanding. We developed a structure that allowed the client to do so without recognizing cancellation of indebtedness income.

Canceling Out The Negative | As a result of a loan workout, the client realized cancellation of indebtedness income. We found a way to defer paying tax on that income over an extended period of time by reducing depreciation deductions from other property investments.

Eluding The Consequences | A client acquired distressed mortgages requiring workouts for close to 100 loans. Using our special expertise in tax accounting, we minimized the potentially negative tax consequences lurking in several areas of the tax law.



For The **BUYER OF DEBT**

In acquiring distressed debt, you want to achieve the maximum potential with the minimum exposure. Over the years, we've strategized optimal workout structures for clients and were deeply involved with investors who were acquiring assets from the Resolution Trust Corporation. From performing the critical due diligence to maneuvering through the tax issues, Berdon keeps you protected. Through every stage, Berdon professionals — many whom are attorneys as well as accountants — help you make and implement wise decisions.

Due Diligence

Whether we're examining single or mixed-type loan portfolios, our work encompasses:

- ▶ reviewing loan cash flow
- ▶ measuring loan performance against legal documentation
- ▶ assessing borrower's financial statements and other financial data
- ▶ evaluating the performance of the underlying real estate collateral

Strategy and Monitoring

- ▶ assisting in developing a loan workout strategy depending upon your objectives
 - making a loan performing
 - taking title to the property
- ▶ monitoring loan portfolio performance

Tax Factors

- ▶ choosing the type of entity to acquire the loan portfolio
- ▶ selecting the optimal tax accounting method for the acquiring entity
- ▶ optimizing the tax treatment of the loan cash flows
- ▶ mitigating phantom income

- ▶ evaluating the tax aspects of modifying the acquired debt
- ▶ assessing bad debt deductions
- ▶ optimizing the operating deductions for the loan acquiring entity
- ▶ factoring in market discount and acquisition premium rules
- ▶ weighing state and local tax considerations ■



For The **LENDER**

With loans coming due and uncertainty in the air, knowing the borrower's cash flows and financial viability is pivotal to how you move forward. Leveraging Berdon's years of experience with all types of properties gives us the unique ability to bring the borrower's financial position into sharp focus. We apply a comprehensive approach that factors in business conditions, new and proposed laws, and the borrower's overall enterprise. In performing due diligence, we scrutinize the numbers and cut through the sometimes aggressive assumptions to give you a clear picture for your decision making.

To help assess the borrower's financial position, among the actions we take are:

- ▶ verifying cash flow through detailed lease analysis and testing
- ▶ comparing expenses to industry norms to determine if they are reasonable
- ▶ measuring occupancy requirements
- ▶ reviewing debt service coverage ratios
- ▶ analyzing the assumptions used in determining cash flow — turnover, tenant improvements, leasing commissions, among others
- ▶ evaluating operating and real estate tax recovery assumptions
- ▶ examining the borrower's existing contractual obligations ■

CLIENT EXPERIENCES

Leveraging An Obscure Point | A client purchased many cooperative housing corporation loans that were in default at discounts to the amounts owed. Using a little known provision in the corporate reorganization area, we helped the client avoid adverse tax consequences in the subsequent renegotiation of these loans.

Choosing The Best Path | A client asked us to review his proposed workout, and we immediately saw he would suffer a tremendous tax hit. We laid out two options — one significantly reduced the cancellation of indebtedness income to recognize and the other provided business advantages — enabling the client to choose the option that most closely fit his overall plans.

About Berdon

ESTABLISHED IN 1917, BERDON LLP is ranked among the nation's leading CPA and advisory firms and has nearly 400 professionals and staff at offices in New York City and Jericho, Long Island. The firm delivers a full array of accounting and advisory services to organizations of all types and sizes and the people who own them. Berdon is distinguished by its code of professionalism; recognized for its brainpower and insights; and highly regarded for its collaborative environment — all coming together to the maximum advantage of clients.

As one of the premier real estate accounting firms in the U.S., we know the people, practices, and trends, and understand the nuances. Berdon clients encompass the entire realm of real estate. They range from dynamic entrepreneurs to multifaceted family empires to institutions with diverse holdings. We are trusted advisors to owners, developers, operators, and investors involved in a wide spectrum of properties. Berdon is recognized as an authoritative voice for devising techniques to maximize profitability, minimize costs, and operate efficiently.

Our real estate expertise extends to such areas as:

- Workouts and restructurings
- Improving cash flow
- Conventional and alternative financing
- Structuring complex transactions
- Due diligence
- Operational reviews
- Lease negotiations
- Forensic audits and investigations

**If you have questions on these or related issues, contact your Berdon advisor
or Kayte Steinert-Threlkeld at 212.699.6708.**

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