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Companies looking into the implications of a green future

Q & A

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Why go green?

As eco-friendliness becomes more popular, business-savvy managers are asking, “What’s in it for me?” and “What is considered green?”

Here, some local experts answer commonly asked questions about making an initial investment in environmental sustainability.

Q: What is “LEED?”

Brett Slobin, Attorney, Slobin & Slobin PC

A: In 2000, the U.S. Green Building Council introduced “LEED,” Leadership in Energy and Environmental Design — a green building rating system that encourages and accelerates global adoption of sustainable practices through universally understood and accepted tools and performance criteria. LEED is a third-party certification program and the nationally accepted benchmark for the design, construction and operation of high-performance “green” buildings. It acts as a point system for various types of projects, including new commercial construction and major renovation, existing building operations and maintenance, commercial interiors, core and shell development, homes, neighborhood development, multiple buildings and on-campus building projects, schools and retail. The LEED system awards “points” for achieving thresholds in sustainable site development, water savings, energy efficiency, materials selection, indoor environmental quality and innovation and design. The more points that are tallied (based on a LEED checklist), the greater the chance of a project obtaining a LEED-certified designation.

Q: Does a building need to have a certificate to be "green?"

Fernando Brave, founder, and Christian Sheridan, project manager, Brave/Architecture

A: Sustainability should not be so much of a checklist for new buildings but rather a process of mutual exploration between design firm and client. Many clients want their projects to be sustainable to some degree. Owners want to have employees who are comfortable and productive in a building with increased efficiency. At the same time, they need someone with a balance sheet overseeing the design and verifying that the budget and planning still work. There are many ways to achieve that. It comes down to everyone understanding what we can do within the design process to get them there. Working mutually with clients has helped re-evaluate how we make the case for “green” and the process of achieving sustainable opportunities with a project.

Using LEED principles is a good place to start considering a project in holistic environmental terms. A building can be sustainable without being LEED certified, though there are definitely added benefits for projects with certification. Some commercial building owners report higher lease rates and improved employee performance while others use LEED certification as a marketing tool, demonstrating their environmental commitment.

Q: Are there tax incentives for businesses that invest in becoming eco-friendly?

Hobbs Gnaim, attorney, Chamberlain Hrdlicka

A: New legislation and initiatives on the federal, state, and local level are offering businesses a variety of tax benefits for going green. On the local level, Harris County recently became the first county in Texas to adopt a going-green abatement program for property taxes. The county is offering a partial tax abatement for up to 10 years on new construction of commercial green buildings in unincorporated areas of the county. To qualify, the new buildings must receive LEED certification from the U.S. Green Building Council. LEED certification is available in four levels: Certified, Silver, Gold and Platinum. The amount of tax abatement received from Harris County is based on the level of LEED certification. LEED-certified buildings are sure to increase in numbers as more designers and architects move to offer an increased variety of LEED-certified plans. Additional tax benefits, dependent on LEED certification, are likely to appear in the future.

On the state level, Texas has enacted various provisions in the Texas Tax Code that provide businesses with tax savings with respect to the Texas Franchise Tax (also known as the new Margins Tax). On Jan. 1, 2007, the laws in Texas regarding the Texas Franchise Tax substantially changed, whereby most entities are now subject to the tax. Among such entities are corporations, limited partnerships and limited liability companies. One such tax benefit lies under Section 171.107 of the Texas Tax Code, which provides entities subject to the Texas Franchise Tax a deduction for the cost of a solar energy device. Wind energy is also included as an eligible technology, which is important now that Texas has become one of the nation's leading states in producing wind power. Clean coal projects are also subject to Texas Franchise Tax savings.

On the federal level, Section 179D of the Internal Revenue Code provides a direct monetary incentive to commercial building owners to encourage the use of energy-efficient designs, technologies and procedures in commercial construction. In particular, Section 179D provides owners of commercial real property a tax break by allowing them to deduct the cost of certain energy-efficient commercial building property. This provision applies to both new construction buildings and renovations of existing structures.

Q: What changes are under way regarding greenhouse gasses? How will this impact businesses?

Gerald J. Pels, partner, and Gerald D. Higdon, partner, Sutherland Asbill & Brennan

A: Mandatory disclosure of climate-change risks is likely to become a reality. Future developments and evolving regulatory requirements will impact businesses in a material way, but those companies already understanding their carbon footprint and related climate-change liabilities will be better prepared to manage disclosure and litigation risk.

The Environmental Protection Agency's recent announcement of proposed rule-making concerning greenhouse gasses makes it clear that these emissions will be regulated in the coming years. On July 12, the EPA published its Advanced Notice of Proposed Rulemaking describing the frameworks it could use to regulate GHG. In Mass. v. EPA, the court found that because GHGs fit well within the Clean Air Act's definition of "air pollutant," the EPA is authorized to regulate the emissions. Additionally, the 2008 Omnibus Spending Bill contains a requirement that the EPA develop and implement a GHG reporting system and registry. Because of the bill's time limits, it is likely that a federal GHG reporting requirement will become effective within the next two years. Public companies, therefore, need to adequately prepare for new regulations and potential disclosure obligations.

A possible solution to managing risk surrounding climate change is the formation of a climate-change audit committee to establish a formal GHG knowledge base. Its responsibilities could include monitoring, reviewing, and implementing legal requirements addressing GHG emissions and climate change, assessing and disclosing GHG emissions in operations, products and supply chains, setting emissions-reduction targets and evaluating industry trends and investment options in renewable energy and energy-efficient technology.