In the wake of COVID-19, most organizations will face ongoing challenges in terms of managing cash and liquidity, stabilizing the business to weather lingering economic uncertainty, and planning for long-term revival of the business.

Organizations facing performance issues often find it difficult to differentiate the symptoms from the cause, and this will be exacerbated by the unknown of the post-COVID environment. For many organizations, reestablishing an optimal capital structure will require new restructuring solutions.

Together, KPMG Global Legal Services and Deal Advisory, M&A Tax professionals provide integrated restructuring services to companies, creditors, investors and other stakeholders to preserve and help optimize value for those who are experiencing operational and liquidity challenges across all sectors and market segments.

Our services include a prompt and strategic assessment of your situation, followed by the development of tailor-made solutions and relevant recommendations as to your tax and legal considerations and approach in line with long-term business goals.

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A typical restructuring cycle

- **Economic health**: Immediate liquidity improvement (Cash stabilization in COVID-19 crisis)
- **Underperformance**: Turnaround advice (Performance improvement)
- **Distress**: Financial restructuring (Solvent restructure)
- **Insolvency**: Distressed M&A (Restructuring by transfer)
- **Dissolve business**: Time

Tax and Legal Restructuring Services

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Restructuring is a broader engagement, focusing primarily on the strategic, financial and operational management of a struggling, but viable, business with the objective of returning it to profitability. Every stakeholder’s tax and legal considerations are required to be considered while planning restructuring.

**Company**
- Accelerate tax refunds, defer payments.
- Unlock trapped cash.
- Restructure, cancel, swap debt tax neutrally.
- Preserve tax attributes (e.g. tax losses in operative/corporate reorganization).
- Maintain interest deductions.
- Increase general tax efficiency.
- Ensure compliance with directors duties.
- Understand contractual rights and obligations and minimize risks.
- Understand employee obligations.
- Minimize litigation risk.

**Shareholder**
- Utilize losses in case of a sale/squeeze out.
- Preserve a high tax base in company reorganization.
- Minimize de-grouping charges/claw backs.
- Minimize liability risk in a sale/purchase.

**Current lenders**
- Utilize losses on loan when default, sale or swap occurs.
- Minimize taxes on value increase after debt to equity swap.
- Understand contractual rights and obligations.

**New lenders**
- Minimize taxes on a value increase after loan acquisition.
- Minimize taxes on debt to equity swap of a loan acquired below nominal value.
- Minimize withholding taxes on future interest income.
- Understand contractual rights and obligations.
Key considerations under restructuring

Tax considerations while planning a restructuring include:

**Interest deductibility**
- Optimizing tax deductibility of interest expenses in light of limitations on such deductions introduced in response to base erosion and profit shifting (BEPS).

**Debt forgiveness/amendment**
- Analyzing the relevant exemptions that may be available across a number of jurisdictions.
- Taxable credits can arise where debt is forgiven or amended.

**Taxes on disposals of assets**
- Determination of capital gains taxes, income taxes and transfer taxes arising when assets are disposed of or transferred.
- Determining the unexpected or unnecessary tax liabilities arising out of restructuring.

**Withholding taxes**
- Cash repatriation across various countries/jurisdictions, require withholding taxes to be considered subject to treaty analysis.
- Withholding taxes may also be due on deemed payments.

**Tax attributes**
- Tax attributes such as losses and accumulated tax depreciation may be lost or restricted on a change of ownership.
- Analyzing the restricting use of broughtforward losses.

**Secondary liabilities**
- Understanding the secondary liabilities when acquiring distressed companies.
- Evaluating outstanding debts against associated parties.

**Country/jurisdiction specific considerations**
- Due to the changes in tax legislation across countries/jurisdictions, local advice should always be sought to ensure the key provisions relevant to each location are analyzed and managed appropriately.

**Tax status in insolvency**
- Income received by companies in insolvency is often taxed differently and relief for expenses may be limited.
- Under insolvency, it can trigger tax charges.
Key considerations under restructuring

Legal considerations while planning a restructuring include:

- **Existing contractual rights and obligations**
  - Understand termination rights of both parties.
  - Understand indemnity and liability provisions.
  - Understand any assignment restrictions.

- **Regulatory considerations**
  - Directors duties that must be satisfied.
  - Regulatory approvals required in relation to any restructuring.
  - Understand laws both locally and internationally that impact the restructuring including insolvency laws.

- **Employee considerations**
  - Understand rights of, and obligations owed to, employees in connection with the restructuring.

- **Due diligence**
  - Determine any due diligence required to support the restructure.

- **Documentation**
  - Identify all legal documentation required to properly implement the restructure.
Our service offerings

1. Liquidity management
   - Help maximize tax refund, taxdeferral and tax-holiday opportunities.
   - Allow for tax efficient transfer of cash within the group.
   - Help maximize loss carry-back (e.g. by provisioning).
   - Reclaim value-added tax (VAT) on bad debts.
   - Sale and lease back transactions.

2. Operational restructuring/turnaround advisory
   - Adjust transfer pricing to the modified business model.
   - Debt capacity analysis following operational reorganization.
   - Utilization of tax losses and tax attributes.
   - Secure availability of tax and customs permits and licenses required for continuation of business.
   - Employee tax consequences of workforce reorganization.

3. Financial restructuring
   - Utilization of loss on cancellation of debt at the creditor level and minimize taxation on release of debt at the debtor level.
   - Tax consequences of conversion of debt into equity.
   - Secure deductibility of interest on remaining debt.
   - Tax treatment of increase in value of equity or debt instrument following distress situation.
   - Help avoid adverse tax consequences of (required) legal reorganizations.

4. Pre- and post-insolvency advisory
   - Quantifying the corporation potential tax attributes and identifying and planning for the potential tax consequences arising in debt modifications/debt cancellations.
   - Determining the potential limitations on the deductibility of expenses incurred in the insolvency/bankruptcy proceeding.
   - Determining potential tax consequences of the reorganization plan.
   - Quantifying and planning for the potential tax impacts of asset sales and determining the tax cost of asset sales.
   - Evaluating and analyzing the potential tax effects of intercompany transactions and intercompany reorganizations.
Our service offerings

Legal advisory
Advising on legal considerations relevant to implementing a restructuring including:
— directors duties
— contractual obligations and counterparty risk
— employee obligations
— regulatory approvals
— due diligence to support the restructure; and
— optimum legal structure for the restructure and identification of any associated risks.

Legal documentation
Drafting and advising on legal documentation required to implement a restructure, including:
— sale documentation and ancillary documents
— directors and shareholders minutes
— third party consent documents
— regulatory approval applications; and
— employee related documentation.
KPMG Restructuring capabilities bring together professionals from Global Legal Services and Deal Advisory, M&A Tax to help companies avoid fiscal pitfalls and unpleasant, post-transaction surprises.

In addition to identifying potential tax costs and risks and legal considerations of restructuring, and proposing related actions and methodologies to help minimize risks and negative effects on deal value, we help identify potential saving opportunities to enhance the deal value and propose approaches to capture those opportunities. Our teams are commercially minded, experienced professionals who help clients identify and manage material tax exposures and legal considerations, and look beyond the immediate impact to design deal structures that help enhance returns for the long term.

Potential benefits

**Global reach**
- Internationally-connected teams ready on short notice.
- Close collaboration between you, your local contacts and colleagues around the world.
- Customized approaches developed with a global lens in mind.

**Broad expertise**
- Detailed knowledge in all restructuring phases including legal risks.
- Experience in dealing with the various stakeholders in restructurings.
- Strong track record of restructuring and M&A tax and legal.

**Integrated approach**
- Ongoing interaction between you, your advisors and our professionals across tax, restructuring and legal services.
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