

A Tax Director's Guide to Surviving a Merger or Acquisition

Be prepared — and rise to the occasion — during the crucial months after the announcement of the deal.

Immediately after the announcement of a mergers and acquisitions (M&A) transaction, tax directors of both the acquirer and target companies find themselves embroiled in rapid changes — in more areas than they might expect. If you find yourself in this situation, you may be looking forward to the intellectually challenging tax technical details, yet feel some normal apprehension about the future of your company, your department, and your ability.

Fortunately, M&A transactions typically follow a logical rhythm and sequence. With proper planning, you can use these transactions to the advantage of you and your tax department. During the months immediately following the announcement of the deal, it may be crucial for you to know what people will be expecting from you — and what they might not think to ask, but should. You can either react passively to the transaction situation or proactively leverage it for everyone's benefit.

Look beyond immediate issues

By their very nature, M&A activities can take tax directors out of their comfort zones. Beyond dealing with familiar, department-specific tasks, tax directors likely will, and should, find themselves called upon to contribute to the most important initiatives shaping their new organization.

Unfortunately, some tax executives react to an M&A situation by falling into crisis mode. Instead of supporting their departments, other senior executives, and key governance players across the company, they spend precious time on issues of less importance from a risk perspective.

Prior to and after the announcement of an M&A transaction, you, as a tax director, can play a valuable part in helping your senior management discover synergies, identify pre- and after tax benefits, and improve business processes — to name just a few areas. To be effective in such a multifaceted role, you will need to focus on two things: the clear-cut business tasks before you and the softer (but equally real) human ramifications of the transaction.

The first area is filled with checklists, memos, workplans, and other tax technical details. The second involves managing the uncertainty that inevitably ensues when an M&A transaction is announced. As you rush off to meeting after meeting, you may forget that the people in your department are just as concerned as you are, and probably more so. You will need to pay extra attention to your employees during this anxious time, or these valuable contributors may soon be out the door.

Three areas of priority

Although every transaction is different, we have noted that the necessary areas of focus for tax directors usually fall into three categories: tax technical aspects of a transaction, tax department operational needs, and business process changes.

If you're like many tax directors, you may find the tax technical aspects of a transaction the most interesting and rewarding. You may enjoy analyzing things such as the deductibility of transaction costs, the treatment of executive compensation, and strategically placing acquisition debt to increase the tax benefit of the future interest expense. You can grapple with these and other tax technical topics in an abstract form outside of the context of the overall business transformation. You can also find outside guidance fairly easily in tax periodicals, industry conferences, and through your external tax advisor.



However, tax technical issues are just the beginning of your work. You will also need to address your tax department's broader operational needs. These include changes to the tax provision (including data, process, and technologies), completion of necessary stub-period tax returns, tax department design, tax authority audit management, and information technology needs. Human resource issues are also very important and will be discussed later in this article.

The underlying theme for this operational category represents the minimum considerations for the company's successful transition post-transaction. Should you overlook an issue in the first category — perhaps you recommend placement of the acquisition debt in a subsidiary that may ultimately cause the company to realize less tax benefits than an alternative entity — the sun will still rise tomorrow. However, if you overlook an item in the second category — for example, an error is made in the tax provision in the first quarter after the deal closes resulting in a restatement — the consequences to the company may be much more immediate and severe.

In our experience, many tax directors focus exclusively on tax technical issues in the beginning, but quickly divert their attention to tax department operations when they realize the consequences and visibility of failure in this area.

The third area of focus involves business process changes that are inherent to strategic deals. In an M&A transaction, the acquiring company usually does not buy the target just to hold it passively and collect dividends. Rather, someone at the executive level determined that the two companies would be worth more combined than as separate entities. This implies the existence of certain synergies, mutual support capabilities, and complementary traits.

It stands to reason that underlying business processes usually must be changed to accomplish these post-transaction advantages. The tax department can play an important role in accomplishing the transformation, particularly helping reduce the tax cost of the process changes. Yet tax directors commonly underestimate the speed and scale of business process changes. As a result, these changes often are implemented without forethought to the tax consequences and sometimes with unfavorable impact to the business.

Consider this hypothetical example: As part of a transaction, two of three manufacturing facilities will be closed; the third will stay open and add employees. Your company's operations group might not think to contact

Tackle technology issues quickly

Companies involved in an M&A transaction may have different information systems, sooner or later forcing a move to a single platform. In this situation, you will need to make sure that the new or changed platform can deliver the data needed to fulfill tax reporting, compliance, and other record retention requirements. Because important deadlines will arrive rapidly and because tax authorities and regulators generally don't look kindly on missed filing deadlines, you will need to make technology integration a priority. Technology — tax process enablers — should also be regarded positively. One cannot assume that the tax department personnel will be increased immediately to meet the new organization's needs; thus, faster, more dedicated tax process solutions can ease the pressure.

Evaluate your new department's needs

Coordinating your newly combined department is a challenging — and crucial — task. Here are some helpful tips:

- From the beginning, start thinking about how your new department should be constructed, how it will be staffed and resourced, and how you can keep the best people and adopt the leading practices from the acquired company.
- Concurrently reach out for input from other departments on what they expect from you on tax issues and operations.
- Because your department and that of the other company will be mutually dependent on each other to meet filing requirements, facilitate a positive mutual relationship from the outset.
- Within your company, build departmental bridges as early as possible — before talk of post-closing chaos is more than just an idle rumor.

you to discuss possible tax ramifications or opportunities. Yet if they did, you would be able to offer ways that you and your department could add value.

For example, if your operations group was choosing between two facilities to keep open, you might be able to quantify the relative state tax burdens of the two locations that could be added to their deliberations. As soon as this choice was made, but before staff increases were announced, you could help negotiate a training grant from the city or state where employment will grow. Furthermore, you could advise the operations group on how the proposed facility shut-downs might impact your company's global transfer and advance pricing agreements.

This situation represents just one reason why you need to make sure that the tax department has a seat at the table as soon as possible — and before the transaction closes if such process synergies are crucial to the deal metrics. Smart companies begin to plan for and implement business process changes immediately, and unless you are aware of them in their infancy, you will not be able to add value from the tax side.

Keeping tabs on business process changes while you simultaneously deal with tax technical and tax department operational issues will be a challenge. Many tax directors are tempted to just leap into the fray, working later and later each night. This approach generally carries a high risk of not reaching the goals of the organization. At a minimum, you will lose the opportunity to thoughtfully weigh the competing merits of proposed business process change options. More importantly, you may lose control and struggle with prioritization and execution of the key tasks that need to be addressed. This makes for a very long and uneasy first few months post-transaction, and makes it a time of constant worry that you are missing something more important, no matter how hard you work.

Our experience suggests that a better approach is to take time at the outset of the transaction to plan work efforts in the most detailed fashion possible. This will require extra time and effort at a stage when your time will be a very precious resource; however, every hour spent planning in advance can eliminate numerous hours of effort later.

Reach out and share the labor

After the completion of a transaction, communications and coordination between the two tax departments is critical. Having these groups working separately or in isolation can lead to levels of duplication, spread valuable resources too thin, and present significant obstacles to completing the tight-deadline work that needs to be accomplished.

Your detailed, actionable workplan should cover important aspects of tax technical, tax department operations, and business process changes. This disciplined approach will force you to prioritize your department's efforts over the coming months and highlight, early on, any tasks that your department simply does not have the proper resources to address. This way, you can obtain external assistance, such as temporary staff, as needed. Indeed, since overstuffed tax departments are a rarity today, calling for external assistance for the heavy post-transaction workload may be critical to your survival.

Take care of your people

As previously noted, the people in your department may be even more concerned about the outcome of the transaction than you are. Because they will have much less information, they may assume that you are withholding news.

For example, if you did not explicitly tell them that the tax department will be staying in your city, they may assume a move to the other company's location is imminent. If you did not tell your top lieutenant that he will be second-in-command of the combined tax operations, he may anticipate being positioned below someone from the other company. Finally, if you did not expressly reassure your employees that they will maintain their jobs, they may be concerned about pending terminations.

This stress is often amplified by executive recruiters calling your staff as soon as the transaction is announced. If you were short-staffed before, expect the situation to get notably worse as attrition increases.

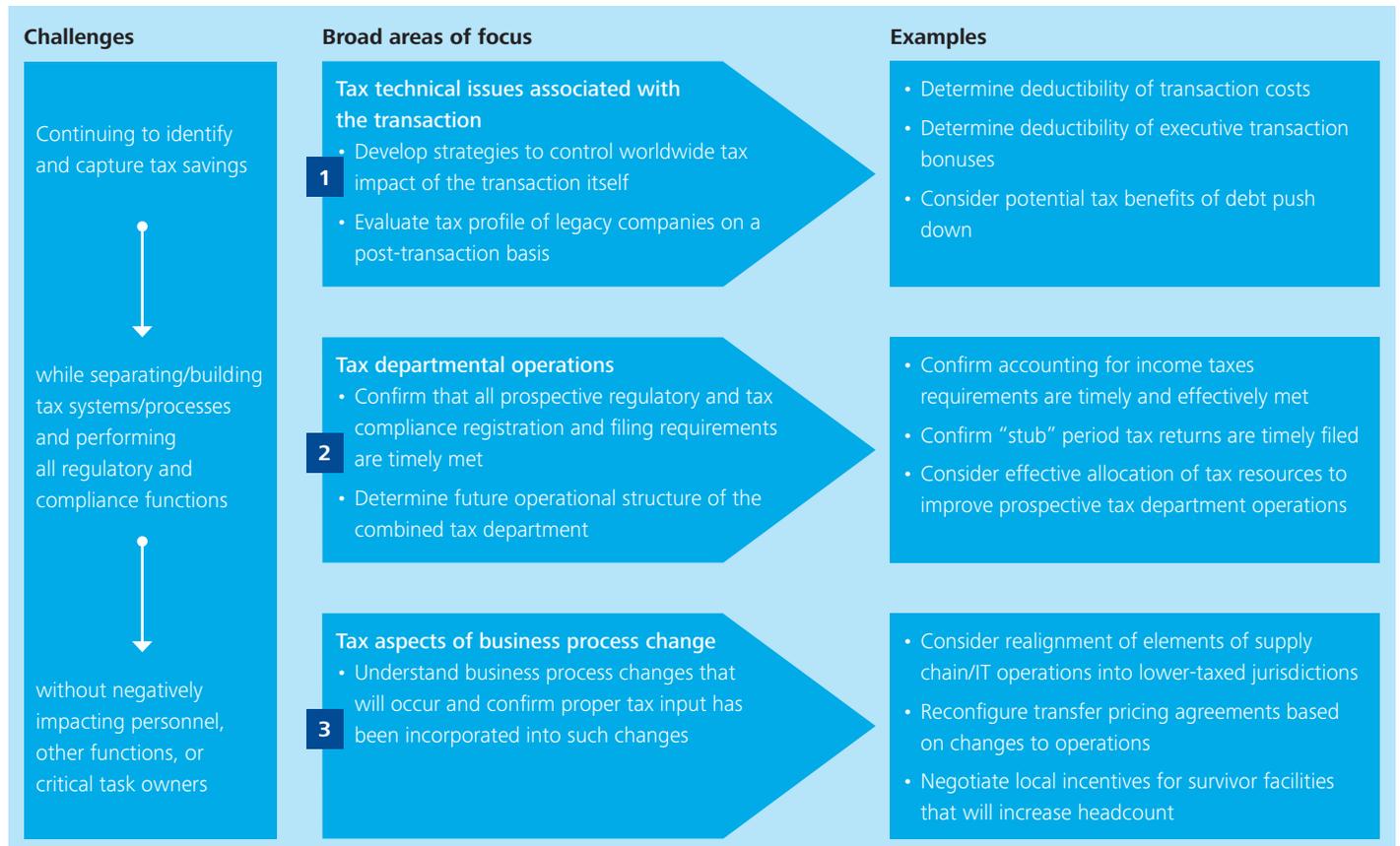
What can you do? First, aim to provide as much information as you can to your staff as soon as you can in an open and frank manner. Try not to give in to the temptation to downplay bad news; you'll earn and keep more respect through honesty and candidness.

Putting it all together

Despite the chaos and multiple priorities that follow an M&A transaction, it is possible to manage and thrive. Start by remembering the following critical tactics:

- Prepare to leave your comfort zone — do what needs to be done rather than what is familiar.
- Build your comprehensive, actionable workplan as soon as possible.
- Stay abreast of the tax technical issues of the transaction.
- Do not neglect operational issues, especially accounting for income taxes.
- Make sure you have a seat at the table when business process changes are discussed.
- Take care of your employees — so they can take care of you.

A sample guide for your workplan



Contacts

Pam Beckey

Partner
Deloitte Tax LLP
+1 617 437 3284
pbeckey@deloitte.com

Chris Kontaridis

Principal
Deloitte Tax LLP
+1 617 437 2821
ckontaridis@deloitte.com

Stephen Tarrant

Partner
Deloitte Tax LLP
+1 703 251 1477
starrant@deloitte.com

Michael Huston

Partner
Deloitte Tax LLP
+1 312 486 4999
mhuston@deloitte.com

Jim Ryan

Director
Deloitte Tax LLP
+1 860 725 3208
jryan@deloitte.com

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