

Positioned for recovery: Identifying strategies to generate value and act with agility

Three key considerations for tax and legal leaders

Maintaining a positive cash position is essential as you move into the recovery phase of the pandemic. Tax and legal leaders are asking us where to focus their efforts both to offset short-term challenges and then preparing to go back online with “business as usual” operations. As they craft strategies to respond to this unprecedented crisis, debt modifications, workouts, and restructuring are front-burner topics. Through our work supporting companies during the first phase of this crisis, we have identified actions that businesses can take to continue to be agile, navigate disruption, and position themselves to recover and thrive. Here are our latest observations.



USE DOWNTURN
PLANNING TO LAY
THE GROUNDWORK
FOR RECOVERY

Strengthen your cash position and increase liquidity: Weigh business priorities and conduct an impact assessment on your cash positions and ability to increase liquidity. This is important to manage immediate downturn planning and to put plans in place for recovery.

- Identify and address the short-term constraints that can have detrimental impact on business continuity if not addressed.
- Explore tax payment and filings deferral opportunities, new tax reliefs, incentives, and administrative simplifications available (across all taxes) in supporting the business' overall liquidity position without undermining trust.
- Keep current on conversations around debt modification, refinancing, or any form of restructuring. Tax will play a vital role in determining value.
- If debt is modified, tax professionals need to be cognizant of accounting consequences; for example, if terms become less onerous, accounting may recognize income. In many territories, the basic position is that tax follows the accounting. Therefore, properly considering the available exemptions or tax attributes to shelter that income is vital.
- Amendments to debt terms, even modest ones, to satisfy short- and long-term cash needs are likely to have major tax consequences.

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- To lessen financial and operating impacts, keep informed on [how governments are mobilizing](#) to support businesses and individuals seeking to mitigate the economic impacts of COVID-19 and understand your eligibility. Measures vary country by country.
 - Implement government measures without undermining trust. Keep relevant revenue authorities up-to-date on your tax approach/actions and [avoid illegal European Union State aid](#). Maintaining the trust of the tax authorities will keep businesses in good stead in the future.
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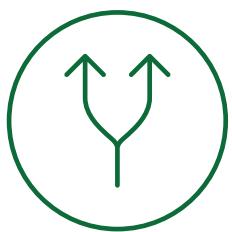


**CONDUCT A
CAREFUL REVIEW OF
DEAL STRUCTURES**

Consider opportunities to repurchase your own debt or purchase distressed debt:

For some companies, the pandemic may create opportunities to repurchase your own debt or for investors to take debt positions in target companies at particularly advantageous prices. While these transactions are normally at a discount to par, it's important to consider the right path and conduct proper due diligence to structure deals in a way that:

- Avoids cancellation of indebtedness income, whether on an actual or deemed release of debt.
- Safeguards the characterization of future payments by the borrower are respected as principal for the new lender, including that of any unwind discount.
- Manages the tax consequences of ongoing receipts of interest, sheltering this where possible and handling withholding tax exposures.



**RECOGNIZE THE FULL
SCOPE OF TAX AND
LEGAL IMPLICATIONS**

Bring tax and legal advice to any considerations of full-scale restructuring:

Companies turn to full scale restructuring when the first round of steps to generate cash and manage existing debt fail. This can result in the real risk of insolvency. If and when moving into the restructuring phase, Heads of Finance, Tax, and Legal must team to thoroughly understand implications of the proposals. Restructuring is likely to require significant planning around transaction costs, risks, and potential future benefits. Avoiding cancellation of indebtedness income, maintaining tax attributes through a change of ownership, managing transaction taxes and de-grouping charges, and understanding secondary liabilities for tax on any other stakeholder are all highly relevant. To plan accordingly, companies should:

- Develop a detailed step-by-step plan including the tax consequences at each step
- Consider the key objectives of a typical restructuring, including to:
 - Facilitate the reduction of third-party debt and amending its terms
 - Potentially facilitate the introduction of new equity holders, with or without a change of control
 - Facilitate a potential future exit or refinancing

To achieve these objectives, the tax advisor will need to:

- Avoid cancellation of indebtedness income whether on an actual or deemed release of debt
- Ensure a clean break with an old structure, if relevant
- Safeguard tax attributes through a change of ownership
- Understand transaction taxes and de-grouping charges
- Manage secondary liabilities for tax on any other stakeholder
- Consider future tax deductibility of interest
- Manage tax leakage on returns to investors
- Structure a management incentive arrangement that ensures all stakeholders' interests are aligned

In the final analysis, insolvency may cause unexpected tax charges. Whether a jurisdiction's bankruptcy code is used as a means of facilitating a restructuring transaction or represents the business' unfortunate demise, the assumption is often made that bankrupt companies surely have so many losses they don't pay tax. That rarely holds true. The rules are complex and often have traps for the unwary. Getting advice from professionals who understand tax law in this environment therefore becomes critical to avoiding value leakage.

Act with agility. Enhance value to navigate recovery.

Companies have had to respond with incredible speed to the immediate impacts of COVID-19 pandemic. However, now is the time to develop a clear, confident, and smart value strategy—with tax and legal at the table—to stay the course through a period of unprecedented uncertainty and begin the road to recovery. This requires early and ongoing engagement to help your business manage and mitigate debt, review cash flow, maintain liquidity and solvency, implement government relief measures, preserve tax attributes, manage historic issues, and if necessary, guide your business through debt modification or restructuring. Bringing sound tax and legal advice will be essential to value preservation and to navigate through the recovery.

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