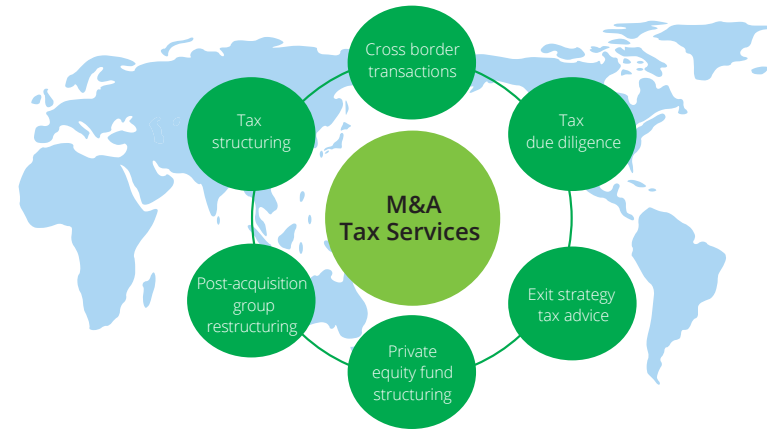


The value of experience

Our knowledge is more than theoretical – the strength of the M&A Tax Services group lies in our wealth of hands-on experience in all types of acquisitions, investment and financing structures, disposition alternatives, and exit strategies for financial buyers. Based on our strengths, we are well positioned to provide the variety of M&A services shown below.

Deloitte Tohmatsu Tax Co. M&A Tax Services



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M&A Tax Services Publication

Practical and effective
tax due diligence
and M&A
Third edition
CHUOKEIZAI-SHA, Inc.



Introducing the fundamentals of tax due diligence, this volume provides an outline of the tax risks of M&A transactions and explains the approaches to executing tax due diligence. In addition, coverage of transfer pricing, foreign tax regimes, and structuring related issues provides an insight into the breadth and diversity of the discipline.

Contact

Deloitte Tohmatsu Tax Co. M&A Tax Services
T e l : +81 3 6213 3800
email : tax.cs@tohmatsu.co.jp
Corporate Info. : www.deloitte.com/jp/en/tax
M&A Tax Services : www.deloitte.com/jp/en/reorganization-tax



M&A Tax Services

Helping you plan the next move

Deloitte Tohmatsu Tax Co.

A winning strategy

Deep technical skills and practical M&A experience are essential in guiding strategic and financial buyers to achieve their goals and objectives in today's rapidly changing domestic and foreign markets. In order to respond accurately and quickly to the needs of these clients, the M&A Tax Services group of Deloitte Tohmatsu Tax Co. brings together tax professionals with comprehensive experience and skills in the field of M&A tax.

The art of the deal

We believe that M&A is an art, not a science. We recognize that your business requirements are diverse and can only be properly met with a creative, flexible approach, backed up by years of proven in-depth M&A experience and skills. By working closely with our clients, we gain a clear understanding of the M&A transaction from both a structural and business perspective and provide a full spectrum of services – our comprehensive approach distinguishes our services from others.

From start to finish

There are two main areas in which we assist our clients: M&A and restructuring of financially distressed businesses. In the M&A area, our team offers a large variety of tax services depending on the type of acquisition transaction -- whether the transaction is conducted by strategic or financial buyers, whether it is an intra-group reorganization, or whether it is a domestic or cross-border transaction, etc. In the area of bankruptcy restructuring and workouts, we can offer our clients extensive knowledge of both corporate tax law generally, and also the various non-tax aspects of the bankruptcy reorganization/turnaround process.

We meet our clients' needs by providing a full range of customized tax advice that addresses various aspects of M&A and restructuring of financially distressed businesses. Our specialists bring to bear their domestic and extensive international experience and skills in each phase of the transaction for our clients' most effective investments.

M&A Phases

[Phase 1 : M&A Strategic Planning] Strategic M&A Tax Advice

- Analysis of tax effects on corporate business strategy
- Strategic tax advice on M&A taxation

Analysis of tax issues relevant to the target company, seller, buyer and other M&A transaction parties represents a key element in assessing overall feasibility and post-reorganization cash flows.

For example, the tax regime regarding corporate reorganization provides the classifications of "qualified" and "non-qualified" transaction regarding M&A transactions, corporate divisions, contributions in kind, distributions in kind, share-for-share exchanges and share transfers. If a reorganization meets certain conditions, realized gains are not subject to any immediate taxation. On the other hand, if the tax-free reorganization occurs within a single corporate group, the use of net operating losses and built-in-losses on certain assets may be subject to limitations. In a reorganization that does not qualify for tax-free treatment, as a general rule, taxable gains as well as deemed dividends may arise. Failure to qualify for tax-free treatment may, under certain circumstances, jeopardize the feasibility of the transaction. As a result, it is essential to analyze the tax impact for the relevant parties and, where necessary, consider structuring alternatives. Following the introduction of 100% group taxation rules, special attention should be paid to the tax implications of transactions within a 100% group.

[Phase 2 : Target Screening] High-level M&A Tax Advice on a specific transaction

- Tax structuring advice
- Tax advice on business valuation
- International tax advice on cross-border transactions

The tax structuring objectives of the seller and the buyer may greatly differ in regard to the reorganization itself and the post reorganization integration. For example, while a tax-free

reorganization is in many cases most effective from the perspective of the seller, the buyer and target may find that a tax-free reorganization is less favorable, inasmuch as it may adversely affect net operating losses and built-in-losses as well as increase the tax burden on future profits. The same tradeoffs may apply to a reorganization within a group, and thus careful planning is required even for intra-group reorganizations. In the advanced stages of the transaction, business valuation may become necessary, in the appraisal of shares for tax purposes or otherwise.

In cross-border transactions, it is essential to take into account potential tax benefits under tax treaties, foreign tax credit, thin capitalization, and controlled foreign companies rules. For example, if the buyer obtains acquisition debt in Japan and the cash flows from the acquired business are generated outside Japan, it is important to establish a structure that anticipates and minimizes the tax cost of cash repatriation.

[Phase 3 : M&A Transaction Execution] Tax Due Diligence and Analysis of Structuring Proposals

- Analysis of tax risks of the target company
- Update of structuring proposals and analysis of alternative solutions
- Review of sale agreement, etc.

Tax due diligence plays a critical role in detecting potential tax risks in the target company so that any countermeasures available to mitigate such exposures can be implemented in a timely manner. The tax analysis of the target company should not be limited to a review of the tax returns. A comprehensive analysis of the tax attributes of the company needs to be carried out, including the taxation status, business flows, ownership of the organization (public or private), location, industry, etc. Tax risks identified in the course of the tax due diligence may also be a significant consideration in negotiating provisions of the sale and purchase agreement (price adjustments, representations and warranties of the seller, etc.), as well as in the review of structuring plans.

[Phase 4 : Post M&A Integration] M&A and Post M&A Tax Advice

- Advice on reorganization
- Advice on tax consolidation rules
- Advice on exit strategy

Following the M&A transaction, internal restructuring or an election to file a consolidated income tax return is often used to achieve a more tax efficient structure. There are initial tax costs on establishing a consolidated group: subsidiaries may need to mark to market certain assets on entry, recognize any built-in gain or loss and pay any applicable tax. Furthermore, net operating losses incurred by any subsidiary before entry into the consolidated group cannot generally be carried forward for use within the consolidated group.

Exit strategies are an important consideration, particularly for financial buyers. Modeling alternatives for the disposal of their portfolio companies taking into account likely tax costs is indispensable for financial buyers to assess the return from their investment.

Corporate Turnaround/Bankruptcy Reorganization Phases

[Phase 1 : Financial Analysis and Business Review]

- Tax Due Diligence
- Analysis of tax risks at the restructuring company

Tax due diligence plays an important part in the development and evaluation of the turnaround plan of a distressed company. Proper understanding of the tax history of the distressed company and the associated tax risks and tax benefits is essential for the various stakeholders to assess the residual value of the company's assets and the prospects for restoring the company to long-term viability.

[Phase 2 : Turnaround Planning]

- Turnaround Planning Assistance
- Tax advice related to the waiver of debt
 - Tax advice on liquidation or reorganization

Minimizing the adverse tax consequences of debt forgiveness by the current creditors is a significant issue in turnaround planning. As the waiver of debt is taxable to the debtor, special rules on net operating losses and valuation losses are commonly utilized to mitigate the debtor's tax cost. The tax consequences of such methods must be examined taking into account a potential subsequent company liquidation or bankruptcy reorganization. The calculation method for liquidation income was changed from residual assets basis to normal income basis. This change requires more careful tax analysis in turnaround planning.

[Phase 3 : Execution of reorganization procedures]

- Services provided upon execution of deals
- Preparation of tax returns
 - Tax advice on the sale of a business

The tax personnel at financially distressed companies usually have little experience with turnaround/bankruptcy reorganization procedures and are unaware of the special tax rules and requirements that apply. We can often assist our clients in preparing tax returns and in meeting their other tax compliance requirements. When the sale of a business or shares takes place under the turnaround plan, we advise our clients on the tax implications. Analyzing the tax issues and their consequences can help the subsequent sale proceed smoothly.

[Phase 4 : Turnaround Planning Execution Assistance]

- Tax advice on the implementation stage of the turnaround planning
- Advice on reorganization
 - Advice on tax consolidation rules

In the initial stages of executing the turnaround plan, the financially distressed company typically will have no taxable income after net operating losses from previous years are used. In the future, as the restructuring process progresses, taxable income will be generated as a result of the effective implementation of the turnaround plan and the additional partial debt waiver that may result from accelerated repayment of the new loan. Therefore, tax-efficient structural alternatives such as a reorganization or tax consolidation should be considered in the long term.

