# Restructuring Services Tax
## A European Perspective

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# Introduction

**Welcome**

Welcome to this, our third edition of the Restructuring Services ("RS") European tax guide. The content has been refreshed and we have expanded the number of territories providing detailed coverage.

Once again, the primary function of this brochure is to highlight some of the main tax implications of restructuring transactions and insolvency procedures across Europe. It continues to ask the exam question, what are the 4 or 5 key tax issues in each territory that are critical in dealing with restructuring transactions.

By its nature, this is far from an exhaustive list but rather is designed to give the reader advance warning of the areas where specialist advice might be required. And the European tax landscape is certainly in flux as governments evaluate and begin to enact the output from the OECD's base erosion and profit shifting ("BEPS") initiatives. Tried and tested cross-border restructuring techniques may need to be reconsidered in what is a tricky environment where there are yet few certainties.

Our RS Tax network comprises tax professionals in member firms across Europe with expertise and experience in the fields of re-financing and restructuring, distressed M&A and investment, insolvency and corporate simplification assignments. The various country teams included in this brochure (and those listed in the contact schedule at the back) regularly work together on pan-European projects and provide clear, integrated and, above all, commercial advice to our clients.

I hope this brochure provides you with useful insight and we look forward to helping you resolve your restructuring tax challenges.

Marcus Rea
RS Tax Partner, London

# Restructuring Services Tax
# What can we offer?

### Overview

RS Tax teams across EMEA have experience of advising on business reviews, re-financings and restructurings, distressed M&A and investment, insolvency and corporate simplification assignments.

In doing so, they advise a range of stakeholders including lenders, borrowers, prospective investors, regulators, management and shareholders.

### Services

The teams included in this brochure can provide a number of services in relation to restructuring and insolvency transactions which include, but are not limited to, the following:

- **Focused reviews of tax cashflow forecasts** – aiming to employ our specialist knowledge to ensure that the cashflow forecasts of a business reflect reasonable assumptions in the circumstances and reflect the underlying tax law.

- **Specialist due diligence expertise** – not only investigating the standard issues, but focusing on the specific concerns prevalent in a stressed environment and with a particular focus on cash costs (and opportunities).

- **Transaction structuring guidance** – aimed at avoiding the tax pitfalls that might crystallise immediate taxable income.

- **Corporate structuring advice** – considering an appropriate holding structure aimed at increasing the return to a lender or investor (minimising future tax on cash extraction – be that, for example, on capital gains or withholding taxes – and commenting on financing structures). Plus potentially also encompassing advice on appropriate incentive arrangements for the management team going forward.

- **Advice on preservation of tax assets** – calling on our experience to ensure assets are protected wherever possible and providing practical guidance of the dos and don’ts post transaction.

- **Managing historic issues** – assisting in managing relationships with tax authorities, dealing with historic issues and, where possible, securing unclaimed tax cash refunds.

# Restructuring Services Tax
## An Austrian perspective

### Overview
There is no Austrian Tax Act which deals exclusively with restructurings. The relevant legislation on restructurings is spread over various tax acts and includes a number of complex rules.

### Common issues
here are a number of key tax issues that regularly impact restructuring and insolvency transactions in Austria. These issues, together with possible actions to manage the tax aspects, should be carefully considered in advance.

#### Debt forgiveness and debt/equity swaps
Under Austrian tax rules, a taxpayer is generally free to fund an investment with shareholder debt or equity. Tax deductions for interest on shareholder debt are reduced if the amount and/or terms of the debt exceed what might have been available in an arm's length scenario, in which case the debt may be considered "hidden equity".

Straightforward debt forgiveness will in general lead to taxable income for the borrower company. Taxable income may be sheltered with tax loss carryforwards (up to a normal maximum of 75%, though in certain scenarios a 100% set-off may be allowed). The rules are more complex when the debt may qualify as hidden equity. In such circumstances the transaction may be tax neutral.

It will be necessary to determine whether the debt is recoverable or not when a waiver or debt/equity swap is considered as this can affect the outcome. Either could potentially trigger a 1% capital duty if a transaction is inappropriately structured. However, capital duty will be abolished as of 1 January 2016.

#### Tax group
A resident company may set up a tax group including resident and non-resident subsidiaries as members. If a tax group member is part of a restructuring transaction the tax group may (in part) cease to exist, which in turn may have a material impact on the tax position of group members. A recent decision of the Austrian Higher Administrative Court regarding a liquidation withhin an existing tax group and the official interpretation of this decision by the Austrian Ministry of Finance means that careful planning is required to manage the tax position.

#### Disposal of national and/or international subsidiaries
Capital gains on disposals of Austrian subsidiaries will be fully taxable at the normal rate of 25% while capital losses as a result of a disposal or write-down would be tax deductible (albeit a capital loss will need to be allocated over a period of seven years). Capital gains or losses relating to non Austrian subsidiaries will generally be tax neutral unless a particular form of transaction is adopted.

#### Stamp Duty
Certain legal transactions (e.g. an assignment) will generally trigger stamp duty (at 0.8 – 2%) if evidenced in a written deed. Note even if there is no written deed such that no stamp duty immediately arises, it can still be triggered at a later date if there is correspondence which refers to that transaction.


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# Restructuring Services Tax
# A Belgian perspective

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## Overview

Restructuring transactions require a multidisciplinary approach in which proper analysis of the tax consequences is imperative. The complex world of Belgian tax law provides numerous opportunities to stumble into a bear trap, but equally to enable a restructuring to happen tax efficiently. Our restructuring team is closely linked to the M&A department, acting together as a one-stop shop.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Belgium. The most frequent are:

### Debt forgiveness

The forgiveness of debt can create taxable income in a borrower company unless the transaction is appropriately structured. The extraordinary accounting income that is generated in the hands of the borrower company on an unconditional ordinary forgiveness of debt between related parties will generally be considered abnormal for tax purposes (on the basis that two unrelated parties would never enter into such a transaction). Available tax attributes (such as tax losses or notional interest deductions) cannot be offset against this income and this often results in an effective cash tax cost unless the transaction is carefully structured.

### Withholding taxes

Debt restructurings can also have withholding tax implications. Interest payments to non-Belgian resident are generally subject to withholding tax. However, Belgium tax law provides for a number of exemptions (and it is worth noting that the exemption in the EU Interest and Royalty Directive have been implemented very broadly).

### Corporate disposals

Generally, both the sale of shares and the sale of assets can result in taxable gains, except where specific exemption regimes are applicable. In this respect, Belgium tax law provides for a conditional exemption regime (i.e. a very low tax rate of 0.412%) applicable to capital gains on shares (subject to various requirements including a holding period of one year) and a conditional roll-over relief for certain capital gains on assets. The EU Merger Directive has been fully implemented in Belgian tax law, which also provides for certain exemptions.

### Secondary liabilities

The inability of a seller to meet its own tax liabilities may result in (secondary) tax liabilities for which the buyer can be held responsible. Belgian tax law provides the possibility of verifying the tax status of the seller on entering into a transaction.

### Tax attributes

Part of the value of a distressed company may be in its accumulated tax assets (e.g. losses, notional interest deduction, etc.). Belgian tax law however includes a change of control rule, which can result in the loss of the accumulated tax losses. Additionally, even under a tax neutral reorganisation, a dilution of the available tax losses may occur. Exceptions and structuring may be available to mitigate these general rules.

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## A Bulgarian perspective

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### Overview
Deloitte's tax team in Bulgaria has significant experience in advising local and international businesses with regard to corporate restructurings and (re)financing transactions. The tax team works hand-in-glove with the Deloitte Legal practice in Bulgaria to present an holistic offering to clients.

### Common issues
There are a number of key tax issues that arise in such projects. Some of the most common are:

#### Debt forgiveness
Debt forgiveness is usually taxable at the level of the borrower and may also trigger donation tax. Debt restructuring transactions need special attention to avoid inadvertently crystallising such a liability where the tax authorities examine substance over precise legal form.

In addition, liabilities that are not paid by a company within a specified period (usually 3 or 5 years) after falling due would normally also be regarded as taxable income whether formally forgiven or not.

#### Withholding taxes
Interest payable to non-Bulgarian residents, as well as any other form of income from financial instruments issued by Bulgarian entities, are generally subject to withholding tax. The withholding tax is due on the accrual of the interest, hence its payment is not relevant for withholding tax purposes.

Relief may be possible under Bulgaria's domestic legislation, the EU Interest and Royalty Directive or a double tax treaty. However, compliance filing obligations must be observed or else penalty interest may apply even if tax relief is in principle available.

#### Corporate disposals and reorganisations
Tax neutral business reorganisations, including in an entirely domestic context, are possible. The rules are similar to the ones in the EU Merger Directive.

In the event that the specific requirements for a tax neutral reorganisation are not met, capital gains are generally taxable. Tax relief may be available with respect to a disposal of listed shares or under a double tax treaty, where relevant.

Bulgaria does not levy stamp duty.

#### Tax attributes
Tax groupings are not available in Bulgaria. Tax losses are not affected by change of ownership but may be lost after the restructuring of a company. Detailed analysis is therefore recommended where a reorganisation is to be affected.

#### Settlement of taxes during winding up
Advice should be sought in relation to the tax implications of liquidation before its commencement. Where tax ranks as a creditor in insolvency will depend on whether a company has given the tax authorities any form of pledge (which may be required from, in particular, stressed and distressed corporates). However, it is not uncommon for significant tax liabilities to arise.

# Restructuring Services Tax
# A Cypriot perspective

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## Overview

The RS Tax team in Cyprus offer solutions that are adapted to the needs of both international and local businesses, including provision of advice on tax implications of restructuring of operations. Where cross-border operations are involved, we work closely with Deloitte offices in other jurisdictions to deliver practical and tailored advice based on the expertise of Deloitte professionals through our globally connected network.

## Common issues

In Cyprus, there are a number of key tax issues that often impact on restructuring of operations. The most frequent are:

### Debt forgiveness

The release of debt can lead to tax implications for both a borrower and lending company, in particular when these are connected parties. To ensure that the transaction is appropriately structured advice should be sought with respect to such debt forgiveness.

### Disposal and acquisition of debt portfolios

The sale and purchase of debt portfolios (including distressed debt) can result in unexpected tax consequences and should therefore be carefully analysed from a tax perspective.

### Corporate disposals and reorganizations

As a disposal of assets may potentially result in taxable profits, professional advice should be sought with respect to any potential exposures and to explore possible options for structuring. This applies with respect to disposals to third parties as well as intra-group transfers.

### Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). It is easy to lose these tax losses on a change of ownership if the way the business has or is to be operated, or indeed in some circumstances how it is intended to be funded, also change.

### Settlement of taxes during winding up

During liquidation, outstanding taxes should be agreed with the tax authorities and settled, and the liquidator will normally require a clearance from the tax authorities. The complexity of this process depends on a number of factors, including the profile of the operations of the company, its assets and shareholders. Professional advice should be sought (including with respect to negotiations with the tax authorities) in order to facilitate settlement of tax obligations and prevent significant delays in the winding up process.

# Restructuring Services Tax
# A Czech perspective


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## Overview

The Czech Tax team has a wealth of experience in the area of restructuring having advised on transactions across various industries around the world. We have advised lenders, borrowers and investors and work closely with colleagues throughout the Deloitte network to provide bespoke advice.

## Common issues

There are a number of key tax issues that may impact transactions in the Czech Republic. Five of the most frequent are:

### Corporate disposals

The sale of shares or assets may result in taxable gains (although the sale of a company may be exempt under the Czech "participation exemption").

An off-shore seller may suffer withholding tax which is remitted to the Czech tax authorities by a Czech buyer (effectively a non-resident capital gains tax). This may be recoverable in certain instances.

### Carve-out issues

Asset carve-outs usually take place in the form of a de-merger with a subsequent share deal, instead of asset deals/sale of (part of) the business. The main reasons are that asset deals are subject to transfer taxes, capital gain taxes and VAT, all of which can be mitigated through a demerger. Time burden and the legal complexity of sale of (part of) the business should be also considered.

### Financing of acquisition

Interest accrued on share acquisition debt financing is strictly non-deductible and therefore post-acquisition reorganisation is recommended to achieve debt push-down/tax deductibility of interest. Thin capitalisation and transfer pricing restrictions need to be considered for related party financing.

### Tax attributes

Part of the value of a target company may be in its accumulated tax losses. It is easy to lose these tax losses on a change of ownership if the way the business has or is to be operated changes (application of the "business test").

### Grants and incentives

Transactions with companies having received grants and incentives should be closely reviewed such that they do not breach conditions given in the respective legislation. Such breach may potentially lead not only to losing these grants and incentives but also to significant fines and penalties.

# Restructuring Services Tax
## A Danish perspective

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### Overview

Danish tax legislation on re-financings and restructurings includes a number of complex rules where the tax consequences depend on various issues, for example, whether the transaction is intragroup, or whether the transaction has a cross-border element.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Denmark. The most frequent are:

#### Debt forgiveness

A debt conversion or a capital increase used to repay debt may be seen as debt forgiveness from a tax perspective. These rules are complex, but it may be possible to take steps to avoid adverse tax consequences.

A "composition" is generally an arrangement with unsecured creditors holding more than 50% of the unsecured debt, whereas a "singular arrangement" is generally an arrangement with unsecured creditors holding 50% or less of the unsecured debt.

The release of irrecoverable debt by a lender can create taxable income (in the event of a singular arrangement) or loss restrictions (in the event of a composition) in the borrower company, although appropriate structuring may mitigate these consequences. In addition, a company may lose part of its previously tax deducted interest expense if interest has not actually been paid.

Within a group (usually parent – subsidiary) there are often no tax consequences for the borrower company in respect of the capital gain realised in connection with a debt forgiveness, unless the lender company (being a Danish or a foreign company) can set-off a corresponding loss against its Danish or foreign taxable income.

#### Corporate disposals

A capital gain realised in connection with the sale of non-listed shares (irrespective of the percentage holding) is generally tax exempt for companies and any losses realised on disposal are not tax deductible. A capital gain or loss realised in connection with the sale of listed shares by a company are not recognised for tax purposes if the shareholding is at least 10%. Various anti-avoidance rules exist in relation to these rules.

A capital gain realised in connection with the sale of assets is generally taxable. There are certain opportunities to transfer assets tax-free, for example, under the EU merger directive.

#### Tax assets

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). When there is a change of control, those accumulated tax losses may be restricted (for operational companies) or lost (for dormant companies). If the restriction applies, the accumulated tax losses for operational companies cannot be utilised against financial income or certain leasing income.

# Restructuring Services Tax
## An Estonian perspective

### Overview

The RS Tax team is integrated with the overall tax line in Estonia. The team has a wide experience in this area having advised on an extensive number of transactions of independent business reviews, re-financings and restructurings, M&A and insolvency since 1995.

The Estonian corporate income tax system is unusual, if not unique, in taxing distributed profits (whether deliberate or deemed) in lieu of an annual corporate income tax. This makes seeking professional advice all the more important as "expected" outcomes from experience of other tax regimes may not hold true.

### Common issues

There are a number of key tax issues that regularly affect restructuring and insolvency transactions in Estonia. Some of the most frequent are:

#### Tax implications of debt restructuring

The forgiveness or waiver of a loan is considered a gift and creates an income tax liability at the level of the lender. The release of debt therefore needs to be appropriately structured if this outcome is to be avoided. No immediate taxation takes place at the level of borrower, unless and until that company pays a dividend in respect of the amount released.

Capitalisation of debt may be a better approach, where possible. No taxation arises for the lender and to the extent of contributions into a company's equity it should then be possible to subsequently make non-taxable (effectively capital) distributions to shareholders.

#### Corporate disposals and change of ownership

Asset and share sales may create certain tax implications for a seller. As well as income tax (which may be levied immediately in certain instances – for instance, where a non-resident vendor sells an real estate rich Estonian company), indirect tax aspects of a transaction and possible notary fee exposures should be considered.

Corporate income tax will not apply on a redistribution of dividends if, inter alia, the originally received dividend has been paid by a subsidiary where the parent holds at least 10% of the equity.

The structure of a transaction may be of concern to potential investors when considering their own possible exit strategies. On a change of ownership the accumulated deferred tax liability on undistributed profits in the company's equity transfers with it.

#### Tax attributes

Due to the nature of the Estonian taxation system, tax reliefs such as tax depreciation, tax loss carry-forward and deferrals do not exist in Estonia. There is no tax consolidation regime – each company files its own returns.

#### Transfer Pricing

Transfer pricing issues need careful consideration; transactions not considered to have taken place at arm's length may be re-characterised as a distribution of value.


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# A Finnish perspective

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## Overview

Finnish tax legislation in this area is particularly complex and subject to interpretation. In addition, the legislation is evolving and therefore it is imperative to take specific advice.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Finland. Five of the most frequent are:

### Debt forgiveness

The release of debt can create taxable income for a Finnish borrower company unless the transaction is appropriately structured. A taxable release may arise when a borrower has its debt waived or forgiven by a related party or even from a third party bank. This area is often subject to scrutiny by the tax authorities and evidence of the fair value of the debt to be waived or forgiven is required. This area therefore requires careful thought to avoid crystallising a significant tax liability. Conversion of debt into equity can, in certain cases, be a more productive alternative.

The release of debt can in certain cases be a tax deductible expense for the lender.

### Corporate disposals

The sale of shares or assets may result in taxable gains. Provided that certain requirements are met, the participation exemption can be available to exempt gains on the sale of shares.

### Transfer tax

Finland levies a 1.6% securities transfer tax on the sale of Finnish shares in cases where either the seller or the buyer is tax resident in Finland. In addition, certain debt re-financings can be caught. Regardless, transfer tax is always payable if the transfer includes shares in Finnish real estate rich companies (tax rate 2%) or real estate located in Finland (tax rate 4%), irrespective of the residence of the parties.

Transfer tax may also be due on the transfer of non-Finnish shares whose activities mainly comprise direct or indirect owning or managing of real estate and the majority of whose assets consist of real estate located in Finland, if either the seller or the buyer is tax resident in Finland.

As a rule, the purchaser is liable for the transfer tax and related filing.

### Tax losses

Part of the value of a struggling company may be in its accumulated tax losses. Tax losses are forfeited if more than 50% (cumulatively) of a company’s shares change hands. Note that certain indirect changes in control may also trigger these restrictions.

However, it may be possible to obtain a discretionary clearance from the tax authorities to preserve losses despite a change in control event if the business activities of the company continue after the change of control and no value is attributed to the tax losses on the transaction.

### Interest deductibility

For financial years ending on 1 January 2014 or after, interest deductibility limitation rules are applicable to interest on a loan which is considered a related party loan. Certain safe harbour rules apply.

# Restructuring Services Tax
# A French perspective

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## Overview

The main tax issues in France on a debt restructuring arise for the debtor and creditor as a result of the steps of the transaction itself. There are also certain post-restructuring issues for the debtor that may need to be considered.

## Common issues

Debt restructurings generally take the form of debt waivers, debt transfers, or conversion of debt into equity, all of which can trigger various tax consequences and which require appropriate analysis and structuring.

### Debt forgiveness

Under French law, a partial or full waiver of existing debts as a result of the debtor being in financial difficulties is treated as a non-tax deductible expense for the creditor, unless the debtor is insolvent and subject to a Safeguard Procedure. Nevertheless, even in this instance, the tax deductibility of the waiver is subject to certain conditions. Generally a waiver of debt is treated as a taxable profit for the debtor (with certain limited exceptions).

### Debt-for-equity exchange

In contrast to a debt waiver, the capitalisation of an existing debt does not trigger any taxable profit for the debtor.

However, such transactions may generate a significant tax leakage for the creditor if the debt was originally purchased from another creditor at a discount to par. Under current regulations, the taxable profit arising for the creditor on a debt for equity swap (where the debt was originally acquired at a discount) is limited to the difference between the market value of the shares received and the acquisition price of the receivable. To benefit from this rule the receivable must have been acquired from an original creditor, which is not related to the acquirer or the debtor (during the 12 months either preceding or following the acquisition date).

### Debt transfers

The transfer of debt from one creditor to another does not generate any specific tax issues provided adherence to certain legal formalities. In particular the debt transfer must be notified to the debtor by a bailiff or accepted by the debtor in a notarised deed. If these formalities are not properly adhered to then the transfer of debt may qualify as a taxable waiver of debt for the debtor followed by the creation of a new debt.

### Amendments to the terms and conditions of the loan

In the case of loans entered into with third parties, guarantees granted by related parties may have adverse tax implications for the debtor, i.e. taint the loan such that it is treated as a related party debt in any event, thereby falling into the scope of French thin capitalisation rules (subject to certain limited exceptions).

# Restructuring Services Tax
# A German perspective

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## Overview

The range and complexity of holding structures in Germany coupled with complex tax legislation can make restructuring transactions an especially complex area. The RS Tax team in Germany has significant experience in advising in this field.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Germany, including the following:

### Debt forgiveness and debt-equity swaps

The release of excess debt can create taxable income in a borrower company unless the transaction is appropriately structured.

On a release or waiver, the difference between a debt's book value and market value (assuming it is lower) is treated as taxable income for the borrower. Only if the loan debt was of full value will it be assumed that there was a non-taxable shareholder's contribution instead. Comparable rules apply for a debt-for-equity swap and similar refinancing transactions.

One potential option is to implement a "debt push up" (where a parent company assumes the loan, effectively equating to a shareholder contribution), which we have advised on in various transactions.

### Tax losses carry forwards

Under the German change in ownership rules, tax losses carried forward in companies will be forfeit if more than 50% of the shares are directly or indirectly transferred. Where there is a transfer of 25 – 50% of the shares, losses will be partially forfeit.

However, there are three exceptions available: (i) if the same person directly or indirectly holds 100% of the shares in both the transferor and transferee entities, or (ii) to the extent of any taxable "built-in gains" in the respective German entity or (iii) the German entity can apply for a restructuring privilege exemption. The latter may require detailed investigation to determine if it applies.

Note, in Germany there are minimum taxation rules in place, which could lead to cash tax payments even in cases where there are significant tax losses carried forward.

### Secondary liabilities

The inability of a company to meet its own tax liabilities may result in (secondary) tax liabilities being passed to other companies in a tax group as a result of reorganisations or transfer of a business. This may include those entities which are being acquired by a new owner.

### Status of tax in insolvency

The extent and volume of tax risks arising on acquisition of a business out of an insolvency process depends on the status and timing of the insolvency procedure. Thus it is important from a structuring point of view to minimise any potential cash tax risks in connection with the transferred business, whether that transfer is to be affected by a share transaction or a trade and assets deal.

# Restructuring Services Tax
## A Greek perspective

### Overview

Changes in Greek tax legislation, effective from 1 January 2014 onwards, make RS Tax advice in Greece more challenging than ever before. Deloitte Greece has a dedicated team of experienced professionals that can provide accurate and up-to-date advice on the newly introduced anti-abuse legislation, corporate M&A legislation, complex interest deductibility rules and transfer pricing regime.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Greece. Some of the most frequent are:

#### Debt forgiveness

Both corporate income taxes, capital tax and stamp duty implications need to be taken into consideration during a debt restructuring process. Debt forgiveness is a particular issue because it is considered to be taxable income for the borrower. If the transaction is structured appropriately then tax losses can be used to offset the taxable income. In addition, assignments and assumptions of debt and associated potential capital tax and stamp duty exposures need to be carefully considered.

#### Corporate disposals

Asset and share deals often create taxable gains for the seller and the structure of a transaction may be of concern to potential investors when considering what their exit strategy might be. It is also important to understand the indirect tax aspects of a transaction and the transfer taxes and duties that might be imposed, especially when real property is involved.

#### Tax losses carried forward

A recent change in the legislation relating to carried forward losses prohibits loss utilisation if there is a significant change (>33%) in the ownership of the loss making entity. But if the restructuring is accepted to be for bona fide commercial reasons the company may retain its right to carry forward the available losses.

#### Interest deductibility

Thin capitalisation and transfer pricing rules as well as the general interest deductibility restrictions need to be examined a priori to ensure proper computation of the taxable income when restructurings are planned and budgeted.

#### Minimising the interest and dividend withholding tax exposure

The use of EU Directives and the extensive network of Double Tax Treaties entered into by Greece can help potential investors manage their withholding tax position.

#### Transfer Taxes

Taxes imposed upon the transfer of shares or a business should be carefully considered as they can range from 0.2 – 26%. Stamp taxes or other levies may also apply to other transactions including directors' fees, some insurance contracts, non-bank debt, non-residential property rents, which are not subject to VAT, etc. Transfer pricing considerations for business reorganisations also need to be carefully managed.

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# A Hungarian perspective

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## Overview

The RS Tax team in Hungary has extensive experience and a well-established tax practice in tax restructuring projects. Most of our advisory projects relate to multinational acquisitions and group restructuring transactions, where we work closely with colleagues throughout the Deloitte network in Europe, North America and Asia-Pacific to provide bespoke advice.

## Common issues

There are a number of key tax issues that regularly impact restructuring and M&A transactions in Hungary. The most frequent ones are:

### Debt forgiveness and debt-to-equity conversion

The release of excess debt can create taxable income in a borrower company. There are various solutions to minimise or eliminate potential tax burden. As there is increasing tax authority attention on these structures, debt-to-equity conversions and other capital restructuring transactions need appropriate analysis to avoid reclassification to taxable events or potential transfer pricing adjustments by the tax authority.

### Tax neutral transformations

Mergers and de-mergers can be implemented at book value or at fair market value. In both cases, the taxation of an asset's book value above its tax value, as well as any tax on step-up in the asset value, may be deferred to a successor. Tax deferral on the potential capital gains is also potentially available at the Hungarian shareholder's level.

### Separation transactions/business line carve-out

Carve-out of business lines within the group in preparation for future disposal can be tax neutral in Hungary through a tax deferral to the acquirer entity. A deferral of the tax on the subsequent disposal of the acquirer entity's shares may also be achieved with appropriate structuring.

### Tax losses

Tax losses accumulated by a Hungarian company can be lost on a change of ownership (or on a transformation) if the nature and the circumstances of the business operation changes or specific conditions are not met. Further, the amount of tax losses generated after 1 January 2015 which can be utilised annually may be limited after a change of ownership (or following a transformation).

### Real estate companies

Hungary has an increasing number of double tax treaties that allow Hungarian capital gain taxation of foreign shareholders on the disposal of shares in a property-rich Hungarian company. In addition, the scope of transfer tax on the acquisition of real estate entities has broadened in recent years. Therefore, transactions involving Hungarian real estate entities require additional attention and potentially pre-acquisition restructuring.

# Restructuring Services Tax
# An Icelandic perspective

## Overview

Deloitte Tax and Legal in Iceland has a great deal of experience in the area of restructuring, having assisted numerous clients since 2007-08. The majority of our experience has an Icelandic connection, i.e. Icelandic lenders or Icelandic domestic/global enterprises undergoing restructuring. We work closely with colleagues throughout the Deloitte network to provide tailored advice for our clients.

## Common issues

A number of key tax issues can impact restructuring and insolvency transactions in Iceland. Five of the most frequent are:

### Debt forgiveness

The release of debt generally creates taxable income in a borrower company, which fact is frequently forgotten in restructuring transactions. There is one notable exception to this principle: debt forgiveness may be non-taxable income in an appropriately structured debt to equity transaction.

### Corporate disposals

Disposals of assets in a restructuring have important tax implications. The sale of shares may result in the realisation of capital gains, which are exempt in certain cases. The corporate sale of assets is always a taxable transaction. However, in appropriately structured mergers and demergers, the transfer of assets may be exempt from taxation.

### Secondary liabilities

In groups that are collectively taxed for income tax or VAT, the inability of a seller to meet its own tax liabilities will result in those liabilities being passed to other companies in a group. These liabilities remain, even if the group is later disconnected for tax purposes.

### Tax attributes

Accumulated tax losses or deferred tax assets are often one of a struggling company's few valuable assets. It is very important to adhere to the strict rules of the Income Tax Act so as to preserve the losses through the restructuring process, e.g. through changes in ownership or operations.

### Status of tax in insolvency

Tax arising during an insolvency process normally must be settled as an expense of the Administrator or Liquidator. Icelandic legislation treats pre-appointment tax as an unsecured creditor. Insolvency brings challenges, for instance, regarding the taxation of income derived from debt forgiveness in insolvency.

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# Restructuring Services Tax
## An Irish perspective

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### Overview

The RS Tax team in Ireland has considerable experience in this area having advised on many transactions in recent years. In the absence of detailed and clear tax legislation, experience in dealing with the Irish tax authorities and knowledge of precedent is important.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Ireland. Some of the most frequent are:

#### Debt forgiveness

The release of excess debt can be taxable in a borrower entity depending on the original nature of the loans. In particular there is specific legislation for those engaged in property transactions and there are restrictions in relation to capital losses where debt is being forgiven.

#### Corporate disposals

The sale of shares or assets may result in taxable gains (although the sale of a trading company may be exempt under the Irish "capital gains tax participation exemption"). However, so-called "de-grouping charges" may also arise when a company is sold having previously received an asset tax-free from another member of its corporate group.

#### Secondary liabilities

The inability of a seller to meet its own tax liabilities may result in those liabilities being passed to other companies in a group (including, for instance, those that may be acquired by a new owner).

#### Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). It is easy to lose these tax losses on a change of ownership if the way the business has or is to be operated also changes.

#### Status of tax insolvency

Tax arising during an insolvency process must normally be settled as an expense of the Receiver or Liquidator. However, insolvency processes also bring unique challenges given, for instance, their tax impact on tax groupings.

During insolvency, VAT complications can typically arise and result in issues which require careful consideration. This is particularly the case for any transactions relating to property.

#### Recent communication with Irish Revenue

A Revenue Statement of Practice remains outstanding but is due to be issued on the tax administration of receiverships which may give some useful guidance.

# Restructuring Services Tax
# An Israeli perspective

## Overview

Deloitte Israel's tax group has vast experience in both domestic and international restructurings and has advised the world's leading multinational corporations on numerous transactions over the years.

## Common issues

There are a number of key tax issues that regularly impact restructuring transactions in Israel. The following are the most frequent issues:

### Israeli Tax Ordinance

The Israeli Tax Ordinance (ITO) provides a relatively extensive array of tax schemes that aim to assist corporate restructurings, and accordingly accounts for share acquisitions, share swaps, asset transactions, and splits. All schemes provide qualifying participants with a tax deferral whilst subjecting them to both strict pre-conditions and post restructuring limitations/lock-ups.

### Pre-conditions

In order to benefit from the tax deferral extended by the ITO, the participants may be required to meet several pre-conditions, such as: the participating entities must be considered Israeli tax residents (unless otherwise pre-approved), must meet certain value requirements, must meet real property qualifying criteria (where relevant), etc. However, we are experienced at identifying the tax scheme most suitable to a transaction while ensuring participants comply with the applicable pre-conditions.

### Disposal restrictions

If the tax deferral regime is accessed, it limits the ability to dispose of shares granted in a restructuring for up to two years following the end of the tax year in which the merger has occurred (Lock-Up). Given the tax authorities separately assess each merger and/or split, restructurings consisting of several mergers and/or splits can result in a relatively long cumulative restriction periods. Note, defaulting and disposing of 10% or more of the shares held by any of the participants during the Lock-Up, may generate an automatic taxable event to all participants. Careful planning of a restructuring can provide the participants with the ability to mitigate the risk of consecutive time restrictions.

### Tax assets

Several restructurings schemes provided by the ITO impose restrictions on the participants limiting their ability to utilise tax assets for up to five tax years following the tax year in which a restructuring has occurred. Again, careful planning may provide some means to alleviate these restrictions and allow tax assets to be used in a more beneficial manner.

### Dilution restrictions

Most restructurings schemes within the ITO impose some form of anti-dilution limitation. This affects participants' ability to raise additional capital above a certain threshold or dilute their rights during the term of the Lock-Up (generally participants must retain 51% of the rights of the absorbing company). Understanding participants' plans and wishes is key to working within these restrictions.

### Transfer of land

The transfer of land or land rich companies may cause additional restrictions to be levied on the participants, such as: the real property transferred needing to be "qualifying" (e.g. not residential property) and all construction work to be finalised within 4 years, etc. Comprehensive assessment of the participants' business plan can allow planning whilst limiting the exposure to problematic pre-conditions or post-transaction requirements.

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# Restructuring Services Tax
# An Italian perspective

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## Overview

Restructuring operations have become increasingly common in Italy during the last few years, largely because of the global economic environment which resulted in both a reduction in the number of good-book (especially large-sized) deals and simultaneously caused many companies to underperform, facing significant problems in meeting their financial obligations.

In addition, the Italian legal framework has evolved, with the introduction of new financial instruments and changes in tax law to facilitate and regulate the implications of certain legal procedures available to enterprises facing crisis or insolvency.

In this scenario, unsurprisingly the demand for restructuring services has grown significantly. And in Italy, the importance of taking appropriate tax advice cannot be understated.

## Common issues

There are a number of key tax issues generally affecting restructuring and insolvency transactions in Italy. These include the following main ones:

### Implications of debt restructuring and of insolvency procedures

A number of tax implications need to be duly considered within insolvency procedures, such as the treatment of losses (for lenders) and of the related gains (from the reduction of debt) for borrowers.

Tax implications of debt purchases at a discount to face value and of debt waivers also need to be considered, from the standpoint of the seller/lender, the buyer and the borrower.

### Withholding taxes

Debt restructurings can also have withholding tax implications; in fact, interest payments to non-Italian resident lenders are generally subject to withholding tax – unless an exemption is available – the rate of which depends on the lender and on the specific conditions.

### Indirect taxation

Tax obligations related to bank financing (bridge and senior loans) need to be carefully monitored, particularly in relation to the security packages that apply.

### Capital gains, tax attributes etc.

Restructuring operations may involve share or assets disposals, contributions etc., having potential impacts in terms of capital gains to be considered (e.g. in terms of availability of the participation exemption regime on share disposals).

Also, change of control, mergers and demergers may impact the ability of the companies concerned to carry forward their tax attributes in certain cases.

# Restructuring Services Tax
# A Kazakh perspective

## Overview

Deloitte's Kazakhstan practice has extensive experience in advising on restructuring and refinancing projects. In view of the nature of Kazakhstan's economy and the volume of inward investment, these engagements often require collaborative work with our colleagues in Europe, the Americas and Asia Pacific.

## Common issues

There are number of common issues faced during restructuring engagements in Kazakhstan:

### Corporate disposals

Kazakhstan's domestic tax code includes extensive, widely drawn non-resident gains taxing provisions. This will be an issue where the underlying assets in Kazakhstan primarily comprise either immovable property and/or "subsoil interests" (being licenses to extract mineral resources). Although certain treaties reduce the rate of taxation applied, only two treaties exempt taxation of such gains in Kazakhstan (Austria and Hungary). A "disposal" for non-resident capital gains purposes is defined broadly and includes a sale of shares, share for share exchange, merger or demerger.

It should also be noted that the non-resident gains tax liability is assessed as a withholding tax from purchase proceeds and the acquirer of any "taxable" shares is determined to be the tax agent responsible for calculating, withholding and remitting the related amounts of Kazakh taxation.

### Debt restructuring

The most common corporate form in Kazakhstan is the Limited Liability Partnership ("LLP"). It is not possible for loans advanced to an LLP to be converted into partnership capital. Any debt to equity conversions must, therefore, be affected either by circulating cash to discharge obligations and pay in capital, or by an initial conversion of the LLP into a Joint Stock Company ("JSC") followed by a debt for equity exchange.

### Financing

The Kazakh tax code may impute income corresponding to any "benefits" received by a Kazakh tax resident for no consideration. These provisions operate so as to render interest free loans, contributions of tangible property, transfers of shares and loan waivers taxable in full. Meanwhile, broadly, interest expense is only deductible if cash paid, with consequent implications for funding structures (e.g. payment in kind notes are not tax effective).

### Preferential tax creditor status

In insolvency, the Kazakh taxation authority has third ranking status in terms of payments to creditors (following employee-related payments and secured creditors).

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# Restructuring Services Tax
# A Lithuanian perspective

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## Overview

The Lithuanian tax legislation on re-financing and restructuring include a number of complex rules. As restructuring can trigger various tax consequences, it requires appropriate analysis and structuring.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Lithuania. These issues should be carefully considered in advance.

### Debt forgiveness

Corporate income tax needs to be taken into consideration during the debt restructuring process. Debt forgiveness is a particular issue because it is considered to be a taxable income for the debtor and a non-deductible expense for the creditor.

### Debt-for-equity exchange

The capitalisation of an existing debt does not trigger any taxable profit for the debtor. However, such operations may generate tax implications for the creditor, in respect of debt purchased from an original creditor at a discounted value, when the shares are disposed of in the future.

A 10% withholding tax may arise on accrued interest that is capitalised, if the creditor is not established in an EEA country or in a country with which a relevant tax treaty is not in place.

### Corporate disposals

The sale of shares or assets may result in taxable gains, although the sale of shares may be exempt under the Lithuanian participation exemption. A capital gain realised in connection with the sale of assets is generally taxable.

If a transaction is appropriately structured and certain conditions are met, goodwill is tax deductible for corporate income tax purposes.

### Tax losses carry forward

In case of a transfer or reorganisation of an entity, tax losses which were incurred by the acquired entity during the accounting period can be carried forward by the acquiring entity if certain criteria are met. Losses may also be transferred from one company to another within the same group of companies and within the same tax period if certain criteria are met.

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). The change of ownership should not prohibit the company from utilisation of losses but certain exceptions apply.

### Withholding tax

There is no withholding tax on interest for EEA companies and companies resident in countries that have a tax treaty with Lithuania.

# Restructuring Services Tax
# A Luxembourg perspective

## Overview

The RS Tax team in Luxembourg has significant experience in this area, and in part reflects the fact that it is very common to use Luxembourg holding and financing companies in group structures.

The Luxembourg tax practice works closely with other Deloitte member firms to provide bespoke advice relating to §a range of distressed situations.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions. Some of the most frequent are:

### Debt forgiveness

The release of excess debt can create taxable income in a borrower company unless the transaction is appropriately structured.

A taxable deemed release may arise where a borrower and lender are (or become) connected and the debt stands at a discount to face value. This may happen in situations where none of the debt is actually being released. There are a number of possible options available.

### Corporate disposals

The sale of shares or assets may result in taxable gains, except where specific exemption regimes are applicable. "Degrouping charges" may also arise when a company is sold and has previously received an asset tax free from another member of its corporate group.

The Luxembourg participation exemption regime requirements and Luxembourg law following the adoption of the EU Mergers Directive, allow for certainty and efficiency when a restructuring also involves the disposal and reorganisation of assets. Furthermore, a wide variety of instruments and vehicles may be put in place in order to meet commercial requirements of an acquirer.

### Cash flow repatriation to the Senior Lenders

The efficient repatriation of funds to the investors/lenders is often a challenge in restructuring and refinancing transactions. Careful consideration before implementing the restructuring transaction can provide greater flexibility in the structure as well as meeting commercial constraints.

### Loan origination

In the event of third party debt refinancing (i.e. loan origination) there are a number of key legal issues to consider, notably banking licence requirements. Luxembourg has proven to be a flexible route in loan origination due to the proactive approach of the Luxembourg regulator.

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# Restructuring Services Tax
# A Maltese perspective

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## Overview

Tax provisions governing restructurings can be found in various parts of Maltese tax legislation and, in the main, these provisions provide for tax efficient restructurings.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Malta, which include the following:

### Debt forgiveness

Forgiven debt is generally taxable income for the debtor if the debt is considered to be of a trading or revenue nature. Debt forgiveness should not be subject to tax if considered to be of a capital nature.

### Corporate disposals and restructurings

Maltese tax law includes various exemptions that are invaluable in restructurings. A transfer involving an exchange of shares in consequence of mergers, demergers, divisions and amalgamations may be exempt from tax. Meanwhile, subject to certain conditions, where companies are controlled and beneficially owned directly or indirectly by more than 50% of the same shareholders, no gain or loss should be deemed to arise upon the transfer of shares from one company to the other and, as a result, the transaction should not be subject to tax.

### Tax losses

Malta distinguishes between trading and capital tax losses. Both may be carried forward indefinitely until offset against appropriate taxable profits (albeit that in-year trading losses can also offset in-year capital gains). Losses may be forfeit on a change of ownership but for careful planning.

### Real estate

Regard must be had to restructurings which involve companies holding immovable property situated in Malta as this could impact the tax treatment of the restructuring and may restrict the application of certain exemptions.

### Stamp duty

Subject to certain conditions, the transfer of shares upon the restructuring of holdings within a group of companies may be exempt from the payment of stamp duty in Malta.

### VAT

The transfer of (part of) a business as a going concern should not trigger a VAT liability in Malta provided certain conditions are satisfied.

### Status of tax in insolvency

The Liquidator of an insolvent company is responsible for any taxes due by the company and is bound to refrain from distributing any assets of the company unless provision is made for the payment in full of any tax which the liquidator knows, or might reasonably expect, to be payable by the company.

# Restructuring Services Tax
# A Dutch perspective

## Overview

Since the Netherlands is one of the preferred European holding countries, pan-European restructuring transactions often will have a Dutch component. The RS tax team in the Netherlands has a wide and in-depth experience in restructuring transactions.

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## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in the Netherlands. Six of the most frequent tax issues are:

### Waiver of debt

Forgiveness of debt will in principle result in a taxable gain for the debtor for Dutch corporate income tax purposes, unless the transaction is appropriately structured.

Although an exemption should be available for profits arising from a renouncement of bad debts by creditors, all too often it is unclear whether an exemption is applicable and discussions arise in this respect. Further, the exemption will only be applicable to the extent there are no tax losses being carried forward as the tax losses must firstly be used against the debt forgiveness.

### Tax attributes

Part of the value of a struggling company can be its accumulated tax losses (or other deferred tax assets) however there may be a loss of these tax losses due to a change of ownership or debt forgiveness. Tax attributes may survive the transaction if appropriately structured.

### Fiscal unity

Specific rules apply within a fiscal unity (tax grouping) for Dutch tax purposes when dealing with debt forgiveness. Forgiveness of external debt or even a bankruptcy of a single fiscal unity company may trigger unexpected taxable releases of debt for the fiscal unity as a whole. Pre-sale restructuring or the sale of shares itself may cause a break of the Dutch fiscal unity and specific anti-abuse and (mandatory) revaluation rules can become applicable, effectively resulting in taxable releases of debt.

### Secondary tax liabilities

The inability of a seller to meet its own tax liabilities may result in those liabilities being transferred to other companies in a group (including, for instance, those companies that may be being acquired by a new owner).

### Status of tax in insolvency

Tax arising during an insolvency process or existing tax liabilities that have not been settled before an insolvency should generally be treated as unsecured liabilities. Insolvency processes also bring unique challenges given, for instance, their impact on tax groupings and the specific tax rules covering a sale or restart of a business.

### Restriction of interest deductibility

The Netherlands has interest denial rules which also apply to third party financing. The potential impact of these rules should be duly considered in any debt restructuring process.

# Restructuring Services Tax
## A Norwegian perspective

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### Overview

The RS Tax Team in Norway are integrated with the Norwegian M&A Tax service line and the team have wide experience of the full range of RS offerings.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Norway. Some of the most frequent are:

#### Debt forgiveness

The release of excess debt will have an impact on any tax losses carried forward and may also be considered as taxable income in a borrower company unless the transaction is appropriately structured. Equally, a taxable deemed release may arise where a borrower and lender are (or become) connected and the debt stands at a discount to face-value. This may happen in situations where none of the debt is actually being released. This area, in particular, is often overlooked and requires careful thought to avoid crystallising significant tax liabilities or loss of tax attributes.

#### Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). Tax losses will be lost on a change of ownership if the change is motivated by the possibility of obtaining those losses.

In the event that the activities in an entity are closed down or the entity is liquidated, any tax losses will be forgone. Appropriately structured, this may sometimes be avoided. Usefully, any losses arising in the liquidation process may be carried back two years and previous tax paid can be refunded.

#### Corporate disposals

The sale of shares will normally be tax exempt due to the Norwegian participation exemption regime, while the sale of assets will normally result in a taxable gain. It may nevertheless be more favourable to transact as an asset sale if losses exist in order to step-up base cost in the assets for the future.

#### Interest limitation rules

Rules limiting interest deductions for related party debt were introduced in Norway with effect from FY14. Interest on related party debt is non-deductible in a year to the extent the net interest expenses (in excess of a NOK 5m threshold) exceeds 30% of tax EBITDA, subject to certain adjustments. In certain circumstances this can extend to third party debt that has been guaranteed or secured by a related party.

#### Norwegian group contribution scheme

Norwegian entities can consolidate for tax purposes under the group contribution regime. This enables a profit making company to make a contribution to a loss making company, claiming a tax deduction for that contribution. The contribution is taxable in the hands of the transferee, but losses may then be offset. To operate within this system, companies must own (directly or indirectly) more than 90% of the voting shares in the transferor and transferee companies at the end of the year in which the contribution is made. This has implications for the timing of restructuring transactions.

# Restructuring Services Tax
# A Portuguese perspective

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## Overview

Portuguese tax law in this area is particularly complex, with a reform of the Portuguese corporate income tax framework implemented with effect from 1 January 2014. Despite their complexity, these changes were in fact designed to promote the competitiveness of the Portuguese corporate income tax legislation. The RS Tax team in Portugal has extensive experience in the restructuring arena.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Portugal. Some of the most frequent are:

### Restructuring taxes

If certain conditions are met, a corporate income tax neutrality regime is available for most of the restructuring operations implemented at a Portuguese level, which removes tax that otherwise arises.

A transfer of ownership of immovable property may be subject to property transfer tax and stamp tax. Exemptions are available in certain circumstances.

### Financial restructuring

A restructuring transaction can often be the opportunity to improve the efficiency of a company's capital and debt structure. Careful consideration of this area can have significant working capital benefits. This can particularly be the case where Portuguese group taxation relief applies, allowing the use of interest expense to offset profits generated by other Portuguese resident companies.

Net financial expenses (i.e. interest expenses less interest income) are deductible up to the higher of €1m or 50% (40% in 2016 and 30% from 2017 onwards) of the tax-adjusted EBITDA. The threshold may be computed on a standalone basis or on a group basis.

### Maintenance of existing tax attributes

The value of a company may partially depend on its accumulated tax losses and other tax attributes, which, in some situations, may be lost as a result of a change in the ownership of the company or the implementation of a restructuring operation. This area requires detailed thought in order to maintain the existing tax attributes where possible.

### Corporate disposals

The Transfer of a Business as a Going Concern (as well as the sale of assets) of Portuguese companies may result in taxable gains. Gains on assets may be reduced under a rollover relief mechanism such that only 50% is immediately taxable.

Capital gains derived from the disposal of a financial participation in a company of more than 5% and held for more than 24 months are generally not taxable. Where specific requirements are met, this exemption may also be available for capital gains assessed by nonresident entities on the sale of shares under the domestic rules where an applicable double taxation agreement does not automatically eliminate the liability to corporate income tax.

For an acquirer, since 1 January 2014, different tax implications apply in Portugal depending on whether an acquisition is structured as an asset deal or a share deal. Importantly, in an asset deal, goodwill that is booked may be taxdeductible for an acquirer over a 20 year period.

# Restructuring Services Tax
# A Russian perspective

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## Overview

The RS Tax team in Russia has a wide experience of working with clients requiring assistance with restructuring and insolvency transactions. The team has many years of experience advising clients both on M&A projects and ones initiated by business owners.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Russia. Four of the most frequent are:

### Debt forgiveness

The release of excess debt can create taxable income in a borrower company. This may be avoided by certain restructuring measures if performed sufficiently early.

### Thin capitalisation rules

Thin capitalisation is a common issue for companies with a poor financial performance. This may result not only in disallowance of interest deductions, but also in additional withholding tax liabilities. In order to mitigate the thin capitalisation issues and/or withholding tax risks, complex debt restructuring may be required.

### Corporate disposals

The sale of shares or assets may result in taxable gains subject to certain exemptions.

The most common issue is the requirement of a seller to receive additional compensation for the goodwill of a business. However, current Russian legislation does not provide for the possibility of a direct sale of goodwill. Careful planning is therefore required.

### Secondary liabilities

The inability of a seller to meet its own tax liabilities may in certain legally prescribed cases result in those liabilities being passed to the owners. This may equally affect a new owner following an acquisition. In practice this is rarely an issue, most often associated with criminal violations rather than with tax violations; nevertheless contractual protections are often sensible.

# Restruucturing Services Tax
# A Spanish perspective

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## Overview

The Spanish tax regime is fundamentally linked to a company's underlying accounting treatment. In the world of restructuring and distress, this can create numerous complications that require very careful consideration. In addition, Spain's tax law is evolving in this area. The RS Tax team in Spain has a significant amount of experience dealing with these issues.

## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Spain. Some of the most frequent are:

### Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). For FY15 there is a restriction on the use of tax losses such that only 25% / 50% of profits can be sheltered by tax losses carried forward. For FY16 and FY17 this limitation has been relaxed so that up to 60% and 70% respectively of profits may be offset. A *de minimis* threshold of €1m applies (below which all profits may be sheltered) before the limitations apply.

### Debt capitalisation and forgiveness

Waivers and capitalisations of debt often results in an accounting credit which may trigger taxable income, depending on a number of factors (e.g. whether there has been a previous acquisition of the debt at a discount and whether the lender is also a shareholder). If taxable income accrues, the current restrictions on loss usage may result in a cash tax cost. However, restrictions on loss usage may not apply in the case of a waiver of third party debt and even an accounting credit on debt capitalisation may be disregarded depending on the legal procedure adopted.

### Novation of debt or change of terms

If there is a novation or modification of debt, it will be necessary to analyse whether the new terms are substantially different to the original terms. If this is the case, there can be accounting implications with a potential tax impact for the borrower. Also novation of debt may have an impact on registration taxes, depending on how the amendment impacts the security package.

### Mortgage foreclosure

Transfer of properties upon a mortgage foreclosure may result in transfer taxes, VAT and/or stamp duty. Additionally, local taxes and corporate income tax costs may arise. Planning for the foreclosure procedure can help to manage tax costs.

### Impact of balance sheet insolvency

If a company becomes balance sheet insolvent it may no longer be able to form part of a tax consolidation group (or if it is the principal entity of that group, it could cause the group to be extinguished). The loss of tax consolidation can cause significant (and retrospective) cash tax costs. Where possible, remedying balance sheet insolvency in a timely fashion is therefore critical.

### Share or asset disposals

The sale of shares or assets may result in direct and indirect taxes, especially when real estate or "property rich companies" are involved. Local taxes could also result in additional costs to be considered in a proposed restructuring or insolvency transaction.

# Restructuring Services Tax
# A Swedish perspective

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## Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Sweden. The most frequent tax issues are described below:

### Forgiveness of debt

The forgiveness of debt may result in taxable income for the borrower and may also have an impact on the availability of tax losses carried forward, unless the transaction is appropriately structured. Taxable income can also arise where there is no actual release of debt but the debtor and creditor are (or become) associated parties and the debt stands at a discount to face-value.

### Capital maintenance rules

Sweden has capital maintenance rules that require the introduction of new capital if a company's net assets dip below 50% of its registered share capital.

### Corporate disposals

A sale of shares will normally be tax exempt due to the Swedish participation exemption regime, whereas a sale of assets may result in a taxable gain or loss. Depending on the tax position of the selling company and of the acquirer, an asset sale may in some situations be more favourable than a share transaction.

### Real estate

Real estate transfers are subject to stamp duty of 4.25%. If a direct sale of a property to a third party purchaser generates a gain, then it is taxable at 22%. Losses can be used to offset a capital gain.

### Tax losses

Certain restrictions apply to carried forward losses where there is a direct or indirect change of ownership. Broadly speaking, losses carried forward exceeding 200% of the purchase price for the shares in the acquired company, reduced by any capital contributions, are extinguished.

### Interest deductibility

From 1 January 2013 the Swedish interest deduction limitation rules have been broadened and now, generally, apply to all interest payable on loans granted by affiliated companies, regardless of the purpose or origin of the loan.

### General anti-avoidance rule

Under the General Tax Avoidance Act, a transaction may be disregarded if it produces a substantial tax benefit, the tax benefit can be viewed as the predominant reason for the transaction, and certain other conditions are satisfied.

# Restructuring Services Tax
## A Swiss perspective

### Overview

In Switzerland, financial restructuring measures can trigger corporate income tax, withholding tax and stamp duty liabilities. Various reliefs are available. The complexity results from the conditions that must be fulfilled in order to qualify for the reliefs and different (cantonal and federal) authorities applying different approaches.

Restructuring may trigger tax consequences not only for the over-indebted company, but also for other parties participating in the restructuring. Consequently, financial restructuring requires careful advanced tax planning.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in Switzerland. The most frequent are:

#### Debt forgiveness

For corporate income tax purposes, even if a restructuring is a qualifying financial restructuring under Swiss tax law, the forgiveness of debt is a taxable event. If the borrower is a subsidiary, exemptions might apply which allow for income tax neutrality.

The forgiveness of debt by a shareholder is generally subject to stamp duty at 1%. The stamp duty code allows for a one-time relief for contributions up to CHF10m (and above that only if certain requirements are met). Whether or not such reliefs are available needs careful analysis based on the fact pattern of each individual case.

#### Mergers

A merger of an over-indebted company can trigger withholding tax consequences for the merged entity, which might not be refundable for non-Swiss shareholders. Furthermore, there may be income tax consequences for any Swiss individuals holding shares.

#### Tax attributes

In Switzerland, tax losses carried forward remain available even after a merger or a change in ownership, provided there is no tax avoidance motive and the seven year loss carry forward period has not expired.

In the context of a financial restructuring the impact on tax losses carried forward needs to be evaluated. These rules are complex and it may be possible to revisit previous accounting periods and refresh tax losses that have been lost due to expiration of the seven year loss carry forward period.

Considering the above, taxpayers should carefully consider financial restructurings to avoid unexpected tax consequences and/or to benefit from reliefs and exemptions to the extent they are available.

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# Restructuring Services Tax
# A Turkish perspective

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## Overview

The Tax team in Turkey offers a wide range of services including advice on restructurings. They have significant experience in this field.

## Common issues

There are a number of key tax issues that regularly impact restructuring in Turkey. The most frequent are:

### Capital gains taxation

Full tax exemption for individual shareholders and a 75% exemption for corporate shareholders exists in relation to share disposals provided, inter alia, they have been held for a period of at least 2 years (note the other conditions for the corporate exemption can be quite onerous).

### Tax attributes

In share transfers, the historical tax liabilities of the company effectively lie with the transferee. Additionally, if two companies are merged, the surviving company can utilise the carry forward corporate tax losses and carry forward input VAT within certain limitations and subject to anti-avoidance rules.

### Debt push-down

Turkey does not allow tax consolidation; i.e. each Turkish company must file its own tax returns. Where a Turkish resident company purchases the shares of another company, the financial expenses related to an acquisition loan are deductible. However, if the two entities are merged, the tax authorities normally challenge this deductibility arguing the only reason for a merger was to seek a tax advantage. Debt push-down is therefore difficult to achieve and is not recommended.

### Thin capitalisation and transfer pricing

All transactions between related parties must be entered into on the equivalent of an arm's length basis. Where a related party loan exceeds three times a company's equity, any interest and foreign exchange losses incurred on the excess portion are treated as non-deductible.

### Tax free merger and partial demerger

Mergers conducted between corporations resident in Turkey will qualify as tax-free in certain circumstances.

Tax free partial demergers refer to the transfer of certain assets of a company resident in Turkey (held more than 2 years) to another company resident in Turkey as a capital in-kind contribution at their registered values. The tax free partial demerger can be executed, under certain conditions, as part of a restructuring transaction.

### Tax administration in liquidation

Turkey has onerous and very specific rules governing the calculation of taxable profits in liquidation and the filing of tax returns for its duration.

# Restructuring Services Tax
# A Ukrainian perspective

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### Overview

The RS Tax team in Ukraine consists of tax professionals with broad experience in implementing complex multi-stage restructuring projects. To address cross-border tax issues effectively, we maintain long-standing relations with Deloitte teams from a variety of jurisdictions in Europe, the Americas and the Middle East. Apart from serving multinational companies, our Ukrainian-based RS Tax team practitioners have also a proven track record of effective tax restructuring solutions, customised to meet the business needs of the most demanding Ukrainian clients.

### Common issues

Tax restructuring is poorly regulated by Ukraine's legislation. As a consequence, tax issues that might arise within the framework of restructuring projects are numerous and unpredictable. Below is a brief overview of the most frequent ones, which demonstrates the need for expert advice:

#### Terminology

Ukraine's tax legislation is very often contradictory in terms of definitions. From a Ukrainian tax perspective, there is little (if any) clarity as to the difference between demerger, spin-off, reorganisation, winding up, etc. In practice, these terms cause confusion and restrict meaningful analysis of potential tax implications without dialogue with the Ukrainian tax authorities.

#### Methodology

There are no specific rules or guidelines for tax restructuring in Ukraine. Inevitably, businesses have limited awareness of how to document, account for or treat restructuring for taxation purposes.

From a legal perspective, most tax restructuring transactions should be treated as tax-neutral in substance. Due to the lack of adequate regulations and terminology, however, the tax-neutrality principle may arbitrarily be challenged by the tax authorities (for specific examples, see below).

#### Taxes recoverable and prepaid

Where the recoverable and prepaid balances of income tax, VAT and other taxes are transferred to a new taxpayer as part of restructuring, such transfers may be disallowed by the tax authorities without valid reasons.

#### Deemed sale of assets

Assets transferred to a new taxpayer upon restructuring are often treated by the tax authorities as a supply transaction subject to Ukrainian VAT. Care must therefore be taken to ensure that the transaction is economically justified and properly documented in as much detail as possible.

#### Debt forgiveness

Payables forgiven upon restructuring by a taxpayer may result in adverse income tax liabilities. Prior to closing a restructuring deal, all possible solutions to this issue (early settlement, set-off, etc.) should be carefully considered.

#### Corporate disposals involving non-resident entities

The sale of corporate rights in Ukrainian companies involving non-resident entities is not properly regulated by Ukrainian law. It is unclear how Ukrainian taxes may be levied on the non-resident seller.

# Restructuring Services Tax
## A British perspective

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### Overview

The RS Tax team in the UK has a wealth of experience in this area having advised on well over 1,000 separate transactions since 2007. We have advised lenders, borrowers and investors across all industries and geographies, and work closely with colleagues throughout the Deloitte network to provide bespoke advice.

### Common issues

There are a number of key tax issues that regularly impact restructuring and insolvency transactions in the UK. Five of the most frequent are:

#### Debt forgiveness and amendment

The release of excess debt can create taxable income in a borrower company unless a transaction is appropriately structured. Meanwhile, a taxable deemed release may arise where borrower and lender are (or become) connected and the debt stands at a discount to face-value. This may happen in situations where none of the debt is actually being released.

But a new "corporate rescue" exemption will hopefully give much greater scope for flexibility in the precise arrangements adopted and offers absolution from a tax perspective for accounting credits recognised on the amendment of debt terms.

Careful thought is required to avoid crystallising significant unexpected tax liabilities.

#### Corporate disposals

The sale of shares or assets may result in taxable gains (although the sale of a trading company may be exempt under the UK "substantial shareholding exemption"). However, so-called "degrouping charges" may also arise when a company is sold having previously received an asset tax-free from another member of its corporate group.

#### Secondary liabilities

The inability of a seller to meet its own tax liabilities may result in those liabilities being passed to other companies in a group (including, for instance, those companies that may be being acquired by a new owner) or, in specific circumstances, to the company's directors personally.

#### Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). It is easy to lose these tax losses on a change of ownership if the way the business has or is to be operated, or indeed in some circumstances how it is intended to be funded, also change. There is also an increasingly large body of anti-avoidance legislation in this area. Nevertheless, appropriate structuring can enhance deal values and bridge pricing gaps.

#### Status of tax in insolvency

Tax arising during an insolvency process normally must be settled as an expense of the administrator or liquidator. Unusually, UK legislation treats pre-appointment tax as an unsecured creditor, with the aim of fostering rescue transactions. However, insolvency processes also bring unique challenges given, for instance, their impact on tax groupings and how they interact with the UK's schedular system of taxation.

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