Restructuring Services Tax
A European perspective
2016/17
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Welcome
Welcome to this, our fourth annual edition of the Restructuring Services ("RS") international tax guide. As always, the content has been refreshed and we have once again expanded the number of territories that have provided detailed commentary.

The primary function of this brochure is to highlight some of the main tax implications of restructuring transactions and insolvency procedures in key jurisdictions across Europe, the Middle East and Africa. It continues to consider the 4 or 5 key tax issues in each territory that can be critical in dealing with restructuring transactions.

By its nature, the issues raised are far from being an exhaustive list but rather this brochure is designed to give the reader an indication of the areas where specialist tax advice might be required. And the 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. Across the world, significant tax changes are being made in the realms of interest deductibility, the requirements to meet international transfer pricing standards etc and there are fewer certainties than would be ideal, particularly as to how businesses may be taxed going forwards with all of the associated structuring and pricing implications.

Our RS Tax network comprises tax professionals in member firms across EMEA 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 regularly work together on multi-jurisdictional 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
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 tax 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 (managing 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 do’s and don’ts post transaction.

- **Managing historic issues** – assistance 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
There 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 considered in advance.

Debt forgiveness and debt-for-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. Whether the debt is recoverable or not is an important factor when determining if a debt forgiveness or capitalisation can lead to taxable income arising or if it is considered to be a tax neutral equity contribution.

Capital contribution account – Tax equity statement
New tax rules were recently introduced that state that distributions can only be treated as tax exempt dividends to the extent undistributed profits exist, with the excess treated as a repayment of capital (generally taxable as a capital gain) to the extent the capital account has sufficient balance (a choice is no longer available). Carefully planning is therefore required in restructuring scenarios to allow for tax neutral dividend distributions going forward to avoid significant capital gains at the time of the restructuring.

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 within an existing tax group means that careful consideration is required.

Corporate disposals by a resident corporate shareholder
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

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 listed below. The Belgian government has announced its intention to reform the corporate income tax regime, however, no draft law is available yet. It is expected it will include a significant reduction of the nominal corporate income tax rate, a broadening of the corporate income tax basis and the Belgian interest limitation rules (currently providing for a 5:1 debt to equity ratio) will be in line with the EBITDA based limitation as per the EU Anti-Tax Avoidance Directive (ATAD).

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 appropriately 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 (including the EU Interest and Royalty Directive).

Corporate disposals
Generally, both the sale of shares and the sale of other 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
In the case of a sale of assets, 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. tax 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 assets (even under a tax neutral reorganisation). Exceptions and structuring may be available to manage the position.
Restructuring Services Tax
A Bulgarian perspective

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 provide a 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 and may also trigger donation tax at the level of the borrower. 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 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 on the transfer of shares.

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

Settlement of taxes during winding up
Advice should be sought in relation to the tax implications of a 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).

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Restructuring Services Tax
A Channel Islands perspective

Overview
Deloitte’s tax team in the Channel Islands has significant experience in advising on both local and international transactions. They are an integral part of the Deloitte UK firm and work closely with colleagues across the Deloitte global network to provide comprehensive and bespoke advice.

Common Issues
There are a number of tax issues that regularly impact restructuring and insolvency transactions in the Channel Islands. Some of the most frequent are:

Rate of taxation of corporate entities
Both Guernsey and Jersey operate a zero-ten system of taxation under which the standard rate of corporate income taxation is 0%, with certain entities and types of businesses being taxed at either 10% or 20%, or in some cases a combination of rates. These rates have expanded over recent years in both islands and may have a significant impact on the tax attributes of a business.

Debt forgiveness and amendment
In Guernsey, related party debt forgiveness may be disregarded for tax purposes but can trigger corporate income tax liabilities in some cases. Guernsey also has specific anti-avoidance rules that can be triggered as a result of debt transactions and these will need careful consideration.

Jersey has specific legislation surrounding tax relief for debt which can result in debt being disallowed for tax purposes in the borrower. This risk may be reduced if a transaction is appropriately structured.

Corporate disposals
The sale of shares or other assets held as an investment is not subject to capital gains tax in either Guernsey or Jersey. The sale of Guernsey or Jersey land or property, or the sale of shares that convey a right to occupy Jersey land or property, is subject to stamp duty. Guernsey is expected to introduce duty on sale of shares in ‘property rich’ companies in the near future.

Shareholder taxation
Profits and gains arising in a Guernsey or Jersey corporate entity will typically retain their underlying characteristics when distributed to a Guernsey or Jersey resident individual shareholder, subject to certain anti-avoidance rules. Structuring of local management interests in the business may need to take this into account, amongst a range of other factors.

Tax attributes
Part of the value of a company may be in its accumulated tax losses (or other deferred tax assets). However, on a change of ownership of a company, these tax assets may easily be lost. This will be dependent on the nature of the business transfer, the way the business has or is to be operated, and the way in which it is intended to be funded. Guernsey has specific rules in respect of amalgamations that may result in more favourable tax outcomes.

Status of tax in insolvency
In the winding up of an insolvent Guernsey company, taxes and social security relating to employment rank for payment pari passu with most other preferred debts.

In the event of a company being placed en désastre (bankruptcy) or other insolvent procedure, Jersey legislation provides for tax arising in relation to the year in which the insolvency occurs and the immediately previous year, to rank for payment pari passu with other privileged debts.

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Restructuring Services Tax
A Croatian perspective

Overview
Croatian tax legislation on restructurings includes a number of complex rules where the tax impact depends on various issues. Deloitte’s Croatian Tax team has many years of experience in advising local and international companies on corporate restructuring transactions. We work closely with Deloitte offices in other jurisdictions as well as with our legal and accounting advisory teams to ensure fully tailored advice is provided to each client.

Common Issues
There are a number of key tax issues that regularly impact restructuring transactions in Croatia. Set out below is a brief overview of the most frequent ones:

Debt forgiveness and debt-for-equity swaps
Debt forgiveness generally results in taxable income in the borrower company unless the transaction is appropriately structured. It may be possible to capitalise debt tax-free, however this is dependent on how the capitalisation is performed and, therefore, appropriate advice should be sought to prevent unexpected tax liabilities arising. The debt settlement may also trigger withholding tax liabilities for the borrower, as noted below.

Corporate disposals and business combinations
The sale of shares or other assets may result in taxable gains at the standard corporate income tax rate. There are different tax implications depending on whether the transaction is a share deal, an asset sale or a disposal of a going-concern. However, tax neutral business reorganisations through, for example, mergers and spin-offs, including in an entirely domestic context, are possible. In some cases, the provisions of the EU Merger Directive can be relied upon to achieve tax neutrality.

It is worth noting the sale of shares in a Croatian company between non-Croatian residents is generally not subject to Croatian taxation.

Croatia does not levy stamp duty or transfer taxes on share transfers.

Withholding taxes
Interest payments or any other form of interest settlement, for example, capitalisations are generally subject to withholding tax at the rate of 15%. Profit distributions are subject to a 12% withholding tax rate. These rates can however be reduced under a Double Tax Treaty or EU Directives. Debt forgiveness is not considered to be settlement for withholding tax purposes.

Interest deductibility and thin capitalisation rules
All related party financing transactions are potentially subject to restriction, in particular cross border financing, under the thin capitalisation and interest rate deductibility rules. Therefore, such transactions need to be examined in advance to ensure the proper computation of taxable income when restructurings are planned.

Tax losses carried forward
Certain restrictions apply to losses carried forward when there is a business combination, a direct share sale or an indirect change of ownership. Advice should be sought to determine the tax loss carry forward availability.

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Restructuring Services Tax
A Cypriot perspective

Overview
The RS Tax team in Cyprus advises both international and local businesses, including the provision of advice on the tax implications of restructuring 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 the restructuring of operations. The most frequent are:

Debt forgiveness and restructurings
The release of debt can lead to tax implications for both a borrower and lending company, in particular when these are connected parties.
A bank loan may however be restructured tax-free provided certain conditions are met.
Professional advice should therefore be sought on the appropriate restructuring options.

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 reorganisations
As a disposal of assets may potentially result in taxable profits, professional advice should be sought with respect to any potential liabilities 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.

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Restructuring Services Tax
A Czech perspective

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 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. The most frequent are:

Corporate disposals
The sale of shares or other 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 (effectively a non-resident capital gains tax), however 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 can be legally complex, time consuming and are subject to transfer taxes, capital gain taxes and VAT, all of which can be mitigated through a demerger.

Financing of acquisitions
Interest accrued on share acquisition debt financing is non-deductible and therefore a post-acquisition reorganisation is often necessary to push-down debt. Thin capitalisation, anti-abuse and transfer pricing restrictions may apply to 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.

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.

Transfer pricing
The Czech Tax Authorities are focusing more on transactions between related parties. These transactions (e.g. management/service fees) have to be priced on the arms-length principles (and their substance and benefit should be provable). Proper evidence should be in place otherwise additional tax could be assessed in the event of a successful challenge by the Czech Tax Authorities.

Anti-abuse rule
Following a successful challenge in the courts, the entities involved in a restructuring need to be able to sustain the economic and business substance of a transaction. If the transaction is considered to be only tax motivated, then it could be considered an abuse of law and respective tax (and penalties) could become due.
Restructuring Services Tax

A Danish perspective

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 “compound arrangement” is generally an arrangement with unsecured creditors holding more than 50% of the unsecured debt (with all major creditors being part of the agreement), 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 compound arrangement) 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 a gain realised in connection with a debt forgiveness, unless the lender company (being a Danish or a foreign company) can set-off the 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 other 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 wide experience in this area having advised on an extensive number of transactions.

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 based on 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:

Debt restructurings
The forgiveness or waiver of a debt 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 the outcome is to be managed. 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 have 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 a real estate rich Estonian company), indirect tax aspects of a transaction and possible notary fee charges should also be considered.

Corporate income tax will not apply on the payment 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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Restructuring Services Tax
A Finnish perspective

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
In general, the release of debt typically creates taxable income for a Finnish borrower company. 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. However, if it can be supported that the loans have no value, the release should not create taxable income. 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 better alternative.

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

Corporate disposals
The sale of shares or other 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 subject to tax. 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 in a company whose activities mainly comprise the direct or indirect ownership or management of real estate and the majority of whose assets consist of real estate located in Finland, and 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 following a change of control event if the business activities of the company continue after the change of control and no value is attributed to the tax losses in the transaction.

Interest deductibility
In order for interest to be deductible it has to be arms' length and the loan has to be taken out to support the activities of the company. Further, 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

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, where appropriate, structuring.

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

Debt-for-equity exchange
In contrast to debt forgiveness, the capitalisation of an existing debt does not trigger any taxable profit for the borrower. However, such transactions may generate a tax liability for the lender if the debt was originally purchased at a discount to par. The actual liability will depend upon the origin of the receivable.

Debt transfers
The transfer of debt from one lender to another should not result in any adverse tax issues, however it is recommended to notify the lender by transfer by bailiff or by a notarised deed signed by the borrower.

Amendments to the terms and conditions of the loan
Modifications of a loan may be characterised as a novation (i.e. new loan). This can have additional tax implications if the initial loans were grandfathered for thin capitalisation rules purposes and/or if related party guarantees are granted in relation to a third-party loan, such loan may then fall in the scope of thin capitalisation regulations.

Interest deductibility
Many rules limit the ability to deduct financial expenses in France (e.g. thin capitalisation rules, arm’s length rules, anti-abuse rules). These rules would need to be reassessed when restructuring debt, or a group. The French rules may be amended by the BEPS initiative or ATAD, however no changes have been announced at this stage. France has already implemented anti-hybrid rules and has wide-reaching anti-abuse legislation.

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Restructuring Services Tax
A German perspective

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 market value of the loan debt equals its full value will it be assumed that there was a non-taxable shareholder's contribution. 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 are forfeited if more than 50% of the shares are directly or indirectly transferred (partially forfeited if 25-50%).

However, there are exceptions available, for example, if 100% of the transferee and transferor are held by the same person or if the German entity can apply for a restructuring privilege exemption (this 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 or 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 manage 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 asset deal.

Potential BEPS impact on interest deductibility
German tax legislation already includes stringent provisions which accord with several of the BEPS actions. Deductibility of interest expense is already restricted to 30% of taxable EBITDA, and therefore no changes in this regard are expected. New rules are however expected in respect of hybrid instruments to ensure taxation in at least one jurisdiction and eliminating the double deduction of expenses in Germany and a foreign jurisdiction, which may impact the treatment of financing expenses.
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
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 the 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 interest 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. Specific legislation on tax neutral mergers can have significant advantages.

Tax losses carried forward
Carry forward of losses is generally prohibited if there is a significant change (>33%) in the ownership of the loss making entity. However, 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 particularly carefully examined when restructurings are planned and budgeted.

Managing interest and dividend withholding tax exposures
The use of EU Directives and the extensive network of Double Tax Treaties entered into by Greece can help investors manage their withholding tax position. Anti-avoidance provisions have been recently introduced regarding the applicability of the EU Parent/Subsidiary Directive.

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.

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Restructuring Services Tax
A Hungarian perspective

Overview
The RS Tax team in Hungary has extensive experience and a well-established practice in tax restructuring projects. Most of our advisory projects relate to multinational acquisitions and group restructuring transactions, where we work closely with colleagues across 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 listed below.

It should be noted that the Hungarian Government is committed to aligning the domestic tax legislation to the BEPS initiative. There are a number of areas where certain measures have already been included in the 2017 tax bill (for example Country-by-Country reporting, restricting hybrid mismatch arrangements and other tax avoidance structures). The general anti-avoidance rules have been supplemented by increasing the requirement for strong business reasons for the structuring. Further, harmonisation is also expected, in particular, in relation to transfer pricing and disclosure arrangements.

The 2017 tax bill also introduces a new intellectual property (IP) regime which substantially reduces the scope and amount of tax benefits under the IP regime.

Debt forgiveness and debt-for-equity exchanges
The release of excess debt can create taxable income in a borrower company. There are various ways to manage this taxable income such as capitalisations of debt, however these transactions are being scrutinised by the Hungarian tax authorities and therefore appropriate analysis is required to avoid a reclassification as a taxable event, or transfer pricing adjustments by the authorities.

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 a step-up in the asset value, may be deferred to a successor. Tax deferral of any potential capital gains is also potentially available at the Hungarian shareholder's level.

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 gains 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
Icelandic tax legislation can be complex, constantly evolving and subject to interpretation. In addition, Iceland intends to shortly implement some of the recommendations from the OECD BEPS initiative. Therefore, it is essential to seek professional and experienced advice on restructuring transactions in Iceland.

Deloitte Tax and Legal in Iceland works closely with colleagues across 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. 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 other 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 broken 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, for example, through changes in ownership or operations.

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

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Restructuring Services Tax
An Irish perspective

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 other 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 Irish Revenue Guidelines
The Revenue Commissioners published a set of guidelines on the tax consequences of receivership and mortgagee in possession ("MIP") in October 2015. The guidelines are useful in that they set out Revenue’s interpretation of the legislative position of the tax requirements and obligations on receivers and MIPs.
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. Set out below are the most frequent issues. In certain cases, it may be possible to manage these issues if they are considered early enough in the process and professional advice is obtained.

Israeli Tax Ordinance
The Israeli Tax Ordinance (ITO) provides a relatively extensive array of tax schemes that aim to assist corporate restructurings, including 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.

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 period. 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 consideration of a restructuring can provide the participants with the ability to mitigate the risk of consecutive time restrictions.

Tax attributes
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.

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).

Transfer of Land
The transfer of land or land rich companies may result in additional restrictions 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.

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Restructuring Services Tax
An Italian perspective

Overview
Restructuring operations has become increasingly common in Italy during the last few years, largely because of the global economic environment.

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.

Against this backdrop, unsurprisingly, the demand for restructuring services has grown significantly and 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 and restructurings, such as the treatment of losses (for lenders) and of the related gains (from the reduction of debt) for borrowers.

The 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; interest payments to non-Italian resident lenders are generally subject to withholding tax – unless an exemption is available – the rate of tax depends on the identity of the lender and on the specific conditions of the loan.

Indirect taxation
Tax obligations (for example substitutive tax, registration tax, mortgage and cadastral taxes) 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 other asset disposals, contributions etc., and the capital gains position will need to be considered (e.g. in terms of availability of the participation exemption regime to share disposals).

Also, changes 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 associated with 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 deductible when such expense is recognised (i.e. as accrued), however interest paid to banks is only allowable on a cash paid basis, 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 Latvian perspective

Overview
In Deloitte Latvia the Tax team manages restructuring transactions and, to provide the best advice, we work closely with our Legal team. The Tax team has outstanding experience in obtaining reorganization tax rulings that were either tax neutral or tax beneficial for our clients.

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

Tax neutral reorganisations
It may be possible to effect a transfer, merger or division in a tax neutral manner. To apply for this exception certain conditions, which are specified in local corporate income tax law, have to be met.

Debt forgiveness
Debt forgiveness is a particular issue, as it leads to taxable income for the borrower and a non-deductible expense for the lender.

The capitalisation of an existing debt however does not trigger any taxable profit for the borrower. Any gain on the sale of the acquired shares should be tax exempt, equally any losses would be non-deductible.

However, the tax authorities may challenge the restructuring process where part of the debt is forgiven and this not in line with the market conditions.

Corporate disposals
The sale of shares is exempt under local legislation (there are no holding period or shareholding percentage requirements). However, the sale of other capital assets are generally taxable.

Tax attributes
On a reorganisation, tax losses which were incurred by the acquired entity during the pre-acquisition period can be carried forward by the acquiring entity indefinitely. However, loss carry-forward limitations may be introduced from 2017. The draft rules currently suggest that tax losses will be restricted on a change of control (greater than 50%) if the acquired entity does not maintain the same type of economic activity for the five years after the acquisition as it carried out during the last two years prior to the acquisition.

Losses may not be transferred from one company to another within the same group of companies.

Withholding tax
There is no withholding tax on interest (whether paid to an EU or non-EU company). However, interest payable to persons resident in a black list jurisdiction may be subject to 15% withholding tax, This is not the case if the specific jurisdiction has signed the OECD convention on mutual assistance in tax administration matters and this has entered into force.
Restructuring Services Tax
A Lithuanian perspective

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 advice.

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 borrower and a non-deductible expense for the lender.

Debt-for-equity swaps
The capitalisation of debt does not trigger any taxable income in the borrower. However, the exchange may have tax implications for the lender when the shares are disposed of in the future and the debt was purchased from the original lender at a discounted value.

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

Corporate disposals
The sale of shares or other 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 other assets is generally taxable.

Tax losses carry forward
Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). In the 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 for the same tax period if certain criteria are met.

Interest deductibility
Generally, interest in respect of debt taken on to make specific acquisitions should be tax deductible. Subsequent mergers should not impact the tax deductibility of this debt, provided the intention of the merger was to generate economic benefits and not to pursue a tax benefit.

It is important to note, however, that payments made by a Lithuanian company to companies in blacklisted territories are treated as non-deductible expenses, unless the Lithuanian company can prove that such payments are related to the usual activities of the companies, the recipient controls the assets required to perform these activities and there is a direct link between the payment and the economics of the transaction.

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Restructuring Services Tax
A Luxembourg perspective

Overview
The RS Tax team in Luxembourg has significant experience in this area, and this 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. There are a number of possible options available.

Corporate disposals
The sale of shares or other 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, can provide 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 the commercial requirements of an acquirer.

Cash flow repatriation to the Senior Lenders
Avoiding tax charges on the 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.

Withholding tax
There is no withholding tax on arm’s length interest payments made by Luxembourg borrowers. The extensive Luxembourg double tax treaty network, the EU Interest and Royalties Directive and case law allow Luxembourg lenders to manage their foreign withholding tax exposure.

BEPS and substance
The BEPS initiative may lead to the recognition of a permanent establishment abroad if investment decisions are taken outside Luxembourg. There is also a focus by some foreign tax authorities on the place of effective management where taxpayers want to obtain treaty benefits, however we would expect the risk of challenge by foreign tax authorities should be reduced by appropriate levels of substance in Luxembourg and a sound decision-making process.

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Restructuring Services Tax
A Maltese perspective

Overview
Tax provisions governing restructurings can be found in various parts of the 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 to the extent of more than 50% by 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 be offset against in-year capital gains). Without appropriate structuring, losses may be forfeited on a change of ownership.

Real estate
Restructurings which involve companies holding immovable property situated in Malta will have their own specific tax implications and it may not be possible to access certain exemptions.

Stamp duty
Subject to meeting 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.

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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.

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:

Debt Forgiveness
Forgiveness of debt will in principle result in a taxable gain for the borrower 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. Further, the exemption will only be applicable to the extent there are no tax losses carried forward, as the tax losses must firstly be used against the debt forgiveness.

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 break the Dutch fiscal unity and specific anti-abuse and (mandatory) revaluation rules can become applicable, effectively resulting in taxable releases of debt.

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.

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 example, those companies that may be 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 can 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.

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Restructuring Services Tax
A Norwegian perspective

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 services.

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 released. This area, in particular, is often overlooked and requires careful thought to avoid crystallising significant tax liabilities, or the 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 are forgone. Appropriately structured, this may sometimes be avoided. Usefully, any losses arising in the liquidation process may be carried back two years and any tax previously 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 other assets will normally result in a taxable gain. It may nevertheless be more favourable to acquire assets if losses exist in the vendor, as the purchaser may benefit from a step-up in base cost in the assets.

Interest limitation rules
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 25% 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 can have implications for the timing of restructuring transactions.

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Restructuring Services Tax
A Polish perspective

Overview
The Polish Tax team has a wealth of experience in the area of restructuring having advised on complex processes for major Polish and international clients including cross border mergers and acquisitions, reorganisations and carve-out projects for entities operating in various industries and sectors. As restructuring can trigger various tax consequences, it requires appropriate analysis and advice, in particular consideration is required to general anti-abuse rules.

Common Issues
There are a number of key tax issues that regularly impact restructuring transactions in Poland. Some of the most important include:

Debt forgiveness and debt-for-equity swaps
The forgiveness or waiver of loans can result in a taxable income for the borrower and a non-tax deductible cost for the lender (with some exceptions in respect of bank loans).

Capitalisations, under current practice, are treated as contributions resulting in taxable income for the contributor (i.e. lender) equal to the nominal value of newly subscribed shares (which in principle should equal to the fair market value of converted debt).

Financing of acquisition
Generally, interest is tax deductible on a cash paid basis (i.e. not accruals). In the case of debt to fund share acquisitions, advice should be sought to confirm whether the interest expense on the debt should be tax deductible (especially, if subsequently tax consolidation is considered). Thin capitalisation rules apply to broadly defined related party debt and any interest paid exceeding a debt-to-equity ratio of 1:1 is considered to be non-tax deductible.

Corporate disposals and reorganisations
The sale of shares or other assets may result in taxable gains. Generally, capital gains are taxed as ordinary income at the standard corporation tax rate of 19%. Transfer tax may also be payable by the purchaser of shares and other assets.

Tax neutral reorganisations (mergers, demergers) are possible under certain conditions provided there is a valid business justification.

Tax losses carry forwards
Losses may be carried forward for five years, but the deduction in a given year may not exceed 50% of the initial loss incurred. The carry back of losses is not permitted. If appropriately structured, a change in ownership should not restrict the carry forward losses.

GAAR consideration
A general anti-avoidance rule (GAAR) and a VAT “abuse of law” rule became effective on 15 July 2016. For restructurings, taxpayers should ensure there is appropriate documentation on the business justification for it taking place and the documentation is carefully reviewed. This also applies to historic transactions that have resulted in tax benefits arising in the taxpayer post the effective date.

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Restructuring Services Tax
A Portuguese perspective

Overview
The Portuguese tax law in this area is particularly complex. However, despite its complexity, the current law is 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 restructuring transactions, which removes tax that would otherwise arise.

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.

From 1 January 2016, net financial expenses (i.e. interest expenses less interest income) are deductible up to the higher of €1m or 40% (30% from 2017 onwards) of the tax-adjusted EBITDA. Any financing expenses exceeding this amount or unutilised EBITDA capacity in a given tax year may broadly be carried forward to the following 5 tax years. 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, corresponding to, at least, 50% of the share capital or of the voting rights 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 held for at least one year may be reduced under a rollover relief mechanism such that only 50% is immediately taxable. As from 1st January 2016, capital gains derived from the disposal of a financial participation in a company of at least 10% and held for at least 12 months, are generally not taxable. This exemption may also be available for capital gains assessed by non resident entities in certain circumstances (where not eliminated by an applicable double taxation agreement).

For an acquirer, 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 tax deductible for an acquirer over a 20 year period. However, the associated anti-abuse rules need to be considered.

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Restructuring Services Tax
A Russian perspective

Overview
The RS Tax team in Russia has 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 undertaking 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 the 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 other 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, under current Russian legislation does not provide for the possibility of a direct sale of goodwill and careful consideration is 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, and is most often associated with criminal violations rather than with tax violations; nevertheless contractual protection should always be considered.

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Restructuring Services Tax
A South African perspective

Overview
The International Tax team assists multinational companies in effectively managing local and foreign
taxes in a way that aligns with their overall business objectives and operations. The tumultuous global
economy requires a closer relationship between a company’s tax and business operations to identify
opportunities for cash tax savings and tax efficiencies. Deloitte’s approach helps multinationals
manage taxes on earnings, enhance margins and grow their businesses.

Common Issues
There are a number of key tax issues that regularly impact restructuring and insolvency transactions in;
South Africa. Five of the most frequent are:

Debt forgiveness
Debt forgiveness may trigger income tax and capital gains tax consequences in South Africa. Where
a debt is reduced, whether by way of waiver, forgiveness, compromise, or otherwise, there could be
adverse tax consequences for the borrower.

Corporate disposals
The sale of shares or other assets may result in taxable capital gains or capital losses. Taxable capital
gains are proportionately included in taxable income using the applicable inclusion rate of 80%
(previously 66.6%). The corporate tax rate in South Africa is 28%. Therefore, the effective tax rate
on the capital gains is 22.4%.
The sale of shares by a non-resident in a company that is “property rich” will result in capital gains tax
consequences in South Africa.
South Africa has corporate roll-over relief provisions for group companies.

Liquidations
In South Africa, there are specific rules dealing with the income tax and capital gains tax consequences
of liquidating a company. Normally, the liquidating company will transfer its assets and liabilities to
the parent company. This may result in tax consequences (for example, assets transferred to the
parent company are deemed to be disposed of at base cost) for both the liquidating company and the
related company. There are also corporate roll-over relief provisions that may apply to the liquidation
transaction in a group of companies.

Tax attributes
Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax
assets). In South Africa, tax losses created by a company are generally ring-fenced in that company
and the tax losses cannot be utilised/set-off by another company in the group. Careful consideration is
required to ensure the utilisation of losses post restructuring because of a number of anti-avoidance
provisions in the South African Tax law. Tax losses which are incurred from carrying on a trade outside
South Africa are ring-fenced. These tax losses may be utilised when taxable income is realised from the
same trade.

Status of tax in insolvency
Tax arising during an insolvency process must generally be settled as an expense of the administrator
or liquidator. The South African Tax Authorities are a creditor and can put in a claim against the
insolvent company for any outstanding taxes.

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Restructuring Services Tax
A Spanish perspective

Overview
The Spanish tax regime is fundamentally linked to the accounting treatment of items. 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 significant amount of experience dealing with the associated tax 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). There is a restriction on the use of tax losses such that only 70% (60% in 2016) of profits can be sheltered by tax losses carried forward. 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 result 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 an accounting credit on a 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, remediating balance sheet insolvency in a timely fashion is therefore critical.

Share or Asset disposals
The sale of shares or other assets may result in direct and indirect taxes, especially when real estate or “property rich companies” are involved.

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Restructuring Services Tax
A Swedish perspective

Overview
The RS tax team in Sweden has wide experience of independent business reviews, re-financings and restructurings, distressed debt issues, insolvency, and corporate simplification assignments.

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 other 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, however, 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. Following the OECD’s BEPS initiative and EU’s proposed Anti-Tax Avoidance Directive, Sweden is expected to amend its interest deduction rules again in the near future.

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.

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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 an 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 group company, 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 the 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

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. The other conditions for the corporate exemption can be quite onerous. Turkey has concluded more than 80 double tax treaties with other countries and most of the treaties provide capital gain exemption under certain conditions, such as holding the shares for at least one year before the transaction.

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, with 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 any 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 and the interest payments are deemed to be profit distributions which may be subject to dividend withholding tax.

Tax free merger and partial demerger
Mergers conducted between corporations resident in Turkey may qualify as tax-free transactions in certain circumstances. Tax free partial demergers refer to the transfer of certain assets of a company resident in Turkey (i.e. participation shares held more than 2 years; immovable assets; commercial or service businesses) 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

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 our 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 a demerger, spin-off, reorganisation, winding up, etc. In practice, these terms cause confusion and it is usually necessary to discuss the tax implications of a transaction 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 a restructuring for taxation purposes.

Tax returns should be filed with the local financial accounts. Restructuring transactions should be treated similarly to the financial accounting in accordance with local standards or IFRS. 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 be challenged by the tax authorities.

Taxes recoverable and prepaid
Transfers of recoverable and prepaid balances of income tax, VAT and other taxes to a new taxpayer as part of a restructuring may be disallowed by the tax authorities.

Deemed sale of assets
Assets transferred to a new taxpayer upon a 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. A transfer of a going concern is not a VAT-able transaction.

Debt forgiveness
Forgiveness of debt generally results in taxable income in the borrower. 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
According to Ukrainian law, withholding tax of 15% applies to the disposal of shares of a Ukrainian company by a non-resident shareholder. However, the law does not establish the mechanism of applying such tax in cases of a transaction between non-residents and it is unclear how Ukrainian taxes may be levied on the non-resident seller if there is no payment from the Ukraine.

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Restructuring Services Tax
A UAE perspective

Overview
Deloitte's International Tax Services Centre for Excellence in Dubai has gained a wide array of experience dealing with restructurings of leading companies, across all industries. Our team focuses on countries across the Middle East and North Africa, predominantly the GCC region, and assists with and manages all taxation aspects of internal, corporate re-organisations, leveraging off the expertise of our local teams where required.

Common Issues
There are a few key tax and legal issues that regularly impact restructuring and insolvency transactions in the UAE, the most frequent being in relation to:

Real Property Transfer Tax
A transfer charge is levied on the direct (and in specific circumstances indirect) transfer of real property in some of the Emirates which constitute the UAE. The rate varies according to the local jurisdiction in which the property is situated.

For the Emirates of Dubai and Abu Dhabi the rates are 4% and 2%, respectively. Legally, these fees should be equally split between the buyer and the seller, but we have seen in practice that the transfer charge is usually borne by the buyer.

End of Service Benefits
Where employees are rolled over from one entity to another, the current employing company will need to demonstrate that it has paid all end of service benefits to its employees as required under the UAE Labour Law.

End of service benefits can, and sometimes are, considered a substitute for traditional pension schemes which are common in other jurisdictions. An employer is required to accrue roughly 21 days of basic salary for each year of service and pay the liability at the time when the employee's contract with its existing employer is terminated.

On the one hand, the employee could potentially welcome the early pay out. On the other hand, due to the mechanics of the calculation of end of services benefits (i.e. longer periods of service require the employer to accrue a higher number of days per year), the employee could contest an early pay-out.

Other Taxes
The UAE does not generally levy corporate income taxes or withholding taxes on companies and therefore debt forgiveness and corporate disposals can generally be undertaken in a tax free manner.

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Restructuring Services Tax
A UK perspective

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 across the Deloitte network to provide bespoke advice. The UK tax system is currently going through significant changes to be compliant with the BEPS initiative and therefore it is becoming ever more important to obtain appropriate advice before undertaking any restructurings.

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 debt can create taxable income in a borrower company unless a transaction is appropriately structured. Meanwhile, 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 (even where the debt is not actually released). Careful thought is therefore required to avoid crystallising significant unexpected tax liabilities. A new corporate rescue exemption should however provide some more protection going forwards (including in respect of income recognised on amendment of debt terms).

Interest deductibility
Historically, interest on debt owed to third parties has generally been tax deductible, with interest on debt owed to related parties restricted to an arm’s length amount under the UK transfer pricing and thin capitalisation rules. From 1 April 2017, tax deductible interest will be restricted to 30% of a group’s tax EBITDA (subject to a £2m de minimis). There may however be scope to increase the quantum of tax deductible interest on third party debt. It is therefore essential to consider the impact of any restructurings on the group’s tax profile going forwards.

Corporate disposals
The sale of shares or other assets may result in taxable gains (although the sale of 10%, or more, of the shares in a trading company may be exempt under the UK “substantial shareholding exemption”). So-called “degrouping charges” may arise when a company is sold having previously received an asset tax-free from a group member.

Tax attributes
Part of the value of a struggling company may be in its accumulated tax losses. New rules for non-banking groups are being introduced from 1 April 2017 that mean only 50% of profits over £5m (per group) can be offset going forward. This restriction is expected to be in addition to historic anti-avoidance legislation that could result in tax losses being forfeited on a change in ownership where there is a change in the way the business is to be operated or, in certain circumstances, financed. 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 the fact different types of income are taxed under different rules.

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## Contacts (continued)

<table>
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<th>Primary Contact</th>
<th>Telephone</th>
<th>Email</th>
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