Deloitte.

Restructuring Services Tax

An EMEA Perspective

2017/18

Contents

Introduction

Welcome

Welcome to the fifth annual edition of the Restructuring Services ("RS") international tax guide.

This brochure highlights the main tax issues associated with restructuring transactions and insolvency procedures in jurisdictions across Europe, the Middle East and Africa.

The tax landscape

The tax landscape is changing as jurisdictions digest and begin to enact the output from the OECD's base erosion and profit shifting ("BEPS") initiatives.

Significant tax changes are being made in terms of the tax deductibility of interest, the requirements to meet international transfer pricing standards, and tax transparency.

With these new tax changes, as well as wider regulatory variations, it is more important than ever to consider tax provisions across all relevant jurisdictions to enable you to go into any restructuring or insolvency transactions with the right guidance to make the best value decisions.

About us

Our RS Tax network comprises tax professionals in member firms across EMEA with expertise and experience in the fields of managed exits and distressed M&A, financial restructuring and contingency planning, value creation services and portfolio debt acquisition support.

We offer a diverse range of tax services and regularly work together on multi-jurisdictional projects to provide clear, integrated and, above all, commercial advice to our clients.

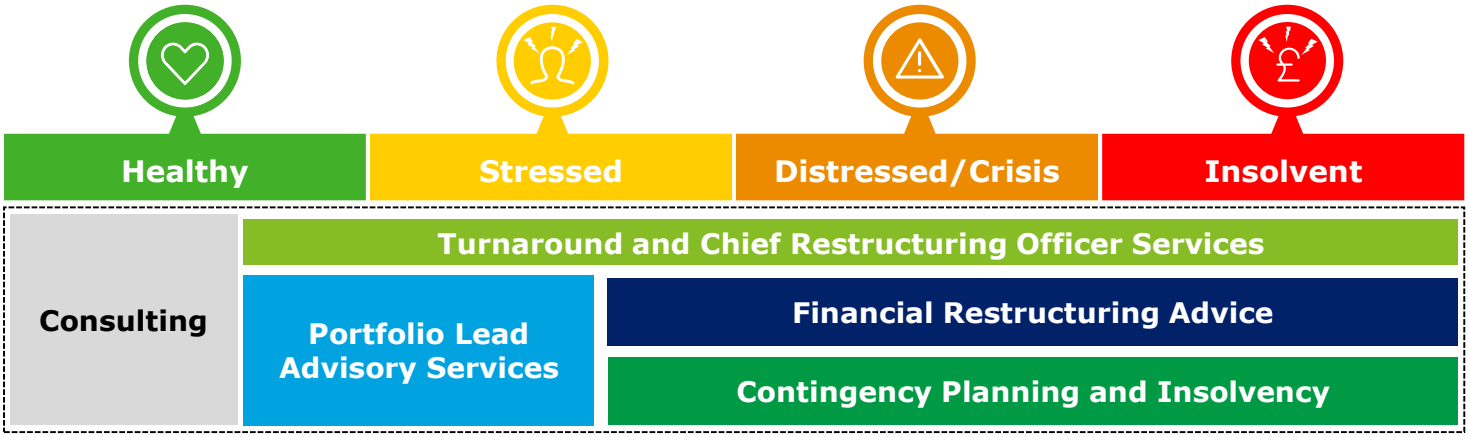
We look forward to helping you solve your restructuring challenges.

Marcus Rea

RS Tax Partner, London

Introduction

Our services



Financial Restructuring Advice

Restructuring Services Offerings

- Creditor and Distressed Debt Advisory
- Business Review
- Stakeholder Management

How tax can add value

- Tax-free release or reset of debts
- Tax efficient new holding structures
- Covenants based on accurate tax assumptions

Turnaround and CRO Services

Restructuring Services

- Performance Improvement
- Working Capital Optimisation
- Managed Exit and Corporate Simplification

How tax can add value

- Fix, sell or wind up without cash tax
- Identify cash tax savings or refunds
- Preserve valuable tax assets

Contingency Planning and Insolvency

Restructuring Services

- Contingency Planning
- Administration Services
- Closure and Liquidations

How tax can add value

- Rescues with cash tax refunds built in
- Early warning and mitigation of cash tax triggers
- Tax free, solvent wind ups

Portfolio Lead Advisory Services

Restructuring Services

- Buy Side Advisory
- Deleveraging Advisory
- Sell Side Advisory

How tax can add value

- Purchaser red flag review
- Tax-efficient work out
- Vendor support to maximise deal value

Introduction

The brochure

For this edition of the RS tax EMEA brochure, we have sought to highlight the key considerations groups should take into account across all jurisdictions when contemplating a restructuring or insolvency transaction. These key considerations are outlined below:

Debt Forgiveness/amendment

- Taxable credits can arise where debt is forgiven or amended.
- Exemptions may be available across a number of jurisdictions if certain conditions are met.

1

Tax status in Insolvency

- Income received by companies in insolvency is often taxed differently and relief for expenses may be limited.
- In addition, insolvency can break tax groups which can trigger tax charges.

5

Interest deductibility

- A number of jurisdictions are beginning to introduce new interest restriction rules in response to BEPS. This can materially impact a group's tax profile.

2

Secondary Liabilities

- Care should be taken when acquiring struggling companies.
- Some jurisdictions' tax authorities may enforce outstanding debts against other associated parties.

6

Tax attributes

- Tax attributes such as losses and accumulated tax depreciation may be lost or restricted on a change of ownership.
- Careful navigation may be required to mitigate this risk.

3

Withholding Taxes

- Domestic withholding taxes can have significant implications for groups looking to repatriate cash or income to other jurisdictions.
- Withholding taxes may also be due on deemed payments (e.g. when capitalising accrued interest).

7

Taxes on disposals of assets

- Capital gains taxes, income taxes and transfer taxes can often arise when assets are disposed of or transferred.
- Unexpected or unnecessary tax liabilities may arise where advice is not sought.

4

Country Specific considerations

- Due to the significant variance in tax legislation across jurisdictions, local advice should always be sought to ensure that the key provisions relevant to each country are managed.

8

Restructuring tax – Austria

Austrian Restructuring Market Overview

2017 has seen certain sectors in Austria more active than others, in particular retail and agriculture. We anticipate that retail will continue to see more restructuring activity in 2018, as the industry adapts to new technologies and consumer preferences.

The ultra-low interest rate environment in Austria continues to enabled marginal businesses to survive. However, should there be a rates increase in 2018, the expectation is that this will result in an increase in restructuring activity.

Ben Trask
Restructuring Partner
+431537002950
bentrask@deloitte.at

Our Austrian Restructuring Tax Team

The relevant legislation on restructurings is spread over various tax acts and includes a number of complex rules. The Austrian RS tax team has significant experience with dealing with these provisions across a wide variety of scenarios.

Edgar Huemer
Tax Partner
+43 1 537 00 6600
ehuemer@deloitte.at

Christoph Riegler
Senior Tax Manager
+43 1 537 00 6640
criegler@deloitte.at

Debt Forgiveness/amendment

Straightforward debt forgiveness will in general lead to taxable income for the borrower company. Taxable income may be sheltered with tax loss carry forwards. However, the rules are more complex when the debt may qualify as "hidden equity".

Certain legal transactions (e.g. an assignment of debt) may trigger stamp duty (at 0.8 – 2%), so should be carefully managed.

Interest deductibility

Interest paid to a related party is generally not deductible for tax purposes unless, broadly speaking, the beneficial recipient is subject to tax on its interest income at an effective and/or statutory rate of at least 10%.

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".

If shares are acquired from a related party in a leveraged transaction, interest expenses arising on any debt utilised in the acquisition is not deductible for Austrian tax purposes.

Tax attributes

Tax losses may be carried forward indefinitely. Utilisation of brought forward losses is limited to 75% of current year taxable income. However, where profits arise from restructurings, in a liquidation, or in financial years affected by insolvency proceedings, tax losses are able to be utilised at a rate of 100%.

Forfeit of tax losses carried forwards could occur if, cumulatively, a qualified change in shareholder coupled with a qualified change in management and a qualified change in business substance occurs within a period of c. 1-2 years.

Taxes on disposals of assets

New tax rules were recently introduced that state that distributions can only be treated as tax exempt dividends to the extent undistributed profits exist. Distributions in excess of this amount are required to be treated as a repayment of capital (generally taxable as a capital gain).

Capital gains/losses arising on disposals of Austrian subsidiaries are generally fully taxable and deductible, while capital gains or losses relating to non-Austrian subsidiaries will generally be tax neutral.

Tax status in insolvency

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.

Secondary liabilities

There are certain cases in which secondary liabilities may arise, such as on reorganisations or withholding taxes.

Withholding taxes

Austria does not generally levy withholding tax on interest paid to non-resident companies. Dividends are generally subject to withholding tax of 27.5% unless this rate is reduced under a domestic exemption, double taxation treaty, or an EU directive.

Restructuring tax – Belgium

Our Belgian Restructuring Tax Team

The complex nature of the Belgian tax provisions surrounding restructurings provides scope for tax efficient restructurings, but also may allow for punitive tax charges where detailed advice is not sought prior to commencing a restructuring.

Emmanuel Brehmen
Tax Partner
+ 32 2 600 66 79
ebrehmen@deloitte.com

Debt Forgiveness/amendment

The forgiveness of debt can create taxable income in a borrower company unless the transaction is appropriately structured. In certain cases, 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.

Interest deductibility

The deductibility of interest expenses is subject to a specific thin capitalisation provision. Interest expenses exceeding a 5:1 debt-equity ratio are considered non-deductible.

A new interest deduction limitation rule, expected to be introduced in 2020, will mean that interest deductions exceeding 30% of a company's EBITDA are not deductible.

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 includes a change of control rule, which can result in the loss of accumulated tax assets (even under a tax neutral reorganisation). Exceptions and structuring may be available to manage the position.

Taxes on disposals of assets

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 and subject to certain conditions, Belgium tax law provides for a conditional exemption regime applicable to capital gains on shares and a conditional roll-over relief for certain capital gains on assets.

Tax status in insolvency

In the case of insolvency, a company remains subject to the general corporate tax regime. However, if a company applies for the legal continuity regime in order to obtain legal protection against its creditors, income stemming from debt-waivers in the framework of the continuity regime is tax exempt.

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 before entering into a transaction.

Withholding taxes

Interest and dividend payments to non-residents are generally subject to withholding tax at 30%. However, this rate may be reduced under a domestic exemption, double taxation treaty, or an EU directive.

Country specific considerations

The Belgian Government has reached a political agreement to reform the corporate tax regime. A key component of this tax reform will be the gradual reduction of the corporate tax rate from 33.99% to 29.58% (in 2018) to 25% (in 2020).

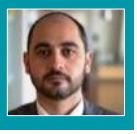
Restructuring tax – Bulgaria

Our Bulgarian Restructuring Tax Team

Deloitte's tax team in Bulgaria has significant experience in advising local and international businesses with regard to corporate restructurings and financing transactions. The tax team works closely with the wider Deloitte network as well as the Deloitte Legal practice in Bulgaria, to provide a holistic offering to clients.

Pieter Wessel
Tax Partner
+ 359 (2) 802 3300
pwessel@deloittece.com

Georgi Simeonov
Tax Director
+ 359 (2) 802 3255
gsimeonov@deloittece.com



Debt Forgiveness/amendment

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 unexpected liabilities.

In addition, liabilities that are not paid by a company within a specified period (3 or 5 years depending on the statute of limitation) after falling due would normally also be regarded as taxable income regardless of whether they are formally forgiven or not.

Interest deductibility

The deductibility of interest expenses is subject to a specific thin capitalisation provision. Companies exceeding a 3:1 debt-equity ratio, with interest expenses that exceed 75% of EBIT, plus interest income, are disallowed for tax purposes.

Interest expenses on bank loans and finance leases as well as late payment penalties/interests are excluded from the regulations (unless the loan or lease is guaranteed by a related party).

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.

Taxes on disposals of assets

Tax neutral business reorganisations 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 shares listed in the EU or the EEA or under a double tax treaty, where relevant.

Tax status in insolvency

Advice should be sought in relation to the tax implications of a liquidation before its commencement. Where tax authorities rank 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 companies).

Secondary liabilities

In cases of corporate restructurings resulting in newly established companies, the latter are jointly liable for the tax liabilities of the restructured company up to the time of the transaction.

There are anti-avoidance provisions that mean secondary liabilities could arise for statutory managers, management bodies, partners or shareholders that take deliberate actions that lead to tax avoidance, actions that cause a company to fail to cover its outstanding tax payments or transfer shares in an insolvent or over indebted company.

Withholding taxes

Interest payments to non-residents are generally subject to 10% withholding tax. The withholding tax is due on the accrual of the interest.

Dividend payments are generally subject to a 5% withholding tax.

Relief may be possible under Bulgaria's domestic legislation, the EU Interest and Royalty Directive or a double tax treaty.

Restructuring tax – Channel Islands

Channel Islands Restructuring Market Overview

The multi-jurisdictional nature of many offshore structures continues to drive demand for corporate simplification work in the Channel Islands, where local tax, regulatory insolvency and, more recently, operational expertise is important in maximising shareholder value.

Alongside this, whilst the islands have never been part of the EU, the importance of the UK market to them means the impact of Brexit will also be felt offshore.

Alex C Adam
Restructuring Director
+44 1481 703 214
acadam@deloitte.co.uk

Andy Wood
Restructuring Senior Manager
+44 1534 82 4237
andywood@deloitte.co.uk

Our Channel Islands Restructuring Tax Team

Deloitte's tax team in the Channel Islands has significant experience in advising on both local and international transactions. Taxation in general in Guernsey and Jersey is often overlooked; however, provisions do exist that can cause unexpected tax liabilities to crystallise where appropriate care and advice is not taken.

Joanna Huxtable
Tax Partner
+44 1481 703 308
jhuxtable@deloitte.co.uk

Debt Forgiveness/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 certain loan transactions and require careful consideration.

Jersey does not have specific legislation surrounding tax relief for debt.

Interest deductibility

Guernsey does not have any specific interest restriction rules.

In Jersey there are no specific interest deductibility rules, however there are general anti-avoidance principals which can apply to interest on intercompany loans.

Tax attributes

Both Jersey and Guernsey have rules that may result in certain tax assets being easily 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. Both Jersey and Guernsey have specific rules in respect of amalgamations that may result in more favourable tax outcomes.

Taxes on disposals of assets

The sale of assets held as investments are 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, paid by the purchaser. Guernsey has proposals to also enact similar provisions.

Tax status in insolvency

In the winding up of an insolvent Guernsey company; taxes and social security relating to employment rank pari passu with most other preferred debts.

In the event of a company being placed in 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.

Secondary liabilities

In Guernsey, liabilities generally cannot be passed through a group, even if the members of a group have entered into an associated company election.

Jersey does not generally provide for secondary liabilities.

Withholding taxes

Guernsey and Jersey do not generally levy withholding taxes.

Country specific considerations

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.

Restructuring tax – Croatia

Our Croatian Restructuring Tax Team

Deloitte's tax team in Croatia has significant experience in advising on both local and international transactions. They work closely with colleagues across the Deloitte global network to provide comprehensive and bespoke advice.

Drazen Nimcevic
Tax Partner
+385 (1) 23 51 900
dnimcevic@deloittece.com

Natko Sertic
Tax Director
+385 (1) 2351 900
nsertic@deloittece.com

Debt Forgiveness/amendment

A write-off of debt generally results in taxable income for the borrower, but can be treated as a tax deductible expense for the lender providing they meet the prescribed conditions.

Additionally, it may be possible to capitalise debt tax-free, depending on how the capitalisation.

Interest deductibility

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

Tax attributes

Tax losses can be carried forward for up to five consecutive years. Tax losses may be subject to certain restrictions when a company participates in business combinations (a direct share sale or an indirect change of ownership). Advice should be sought to determine the tax loss carry forward availability.

Taxes on disposals of assets

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.

Tax status in insolvency

Income retains its character in case of insolvency, i.e. a distribution of income is subject to the Croatian personal income tax if distributed to a Croatian individual and withholding tax if the income is distributed to the foreign recipient.

Secondary liabilities

The inability of an entity to meet its tax liabilities may result in those liabilities being transferred to third parties or, in specific circumstances, to the directors of a company.

Withholding taxes

Interest payments or any other form of interest settlement are generally subject to withholding tax at the rate of 15%. Dividend payments 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 an interest settlement for withholding tax purposes.

Restructuring tax – Cyprus

Our Cypriot Restructuring Tax Team

The RS Tax team in Cyprus advises both international and local businesses on the tax implications of restructuring operations. Where cross-border operations are involved, the team works 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.

Pieris Markou
Tax Partner
+357 22 360 607
pmarkou@deloitte.com

Antonis Taliotis
Tax Partner
+357 25 868 820
ataliotis@deloitte.com

Debt Forgiveness/amendment

The release of debt can lead to tax implications for both the lender and borrower companies, in particular when the lender and borrower 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.

Interest deductibility

In general, interest incurred for the generation of taxable income is treated as tax deductible. There are no thin capitalisation rules, nor are there any interest deductibility provisions specifically applicable to restructurings.

Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). Tax losses may be lost 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.

Taxes on disposals of assets

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.

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.

Tax status in insolvency

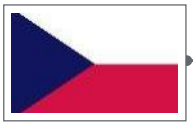
During a liquidation, outstanding taxes should be agreed and settled with the tax authorities. The liquidator will normally require a clearance from the tax authorities to complete the liquidation.

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.

Withholding taxes

Cyprus does not levy withholding taxes on dividend or interest payments.

Restructuring tax – Czech Republic



Czech Republic Restructuring Market Overview

The Czech restructuring market was relatively quiet in 2017, owing mostly to the favourable macroeconomic environment. Economic growth, combined with record low levels of unemployment, were also reflected in the number of insolvency filings, which was down by nearly 5% in the first half of 2017.

With the end of the central bank's three-and-a-half-year exchange rate intervention, exporters in certain sectors may face challenges in 2018.

Radim Base
Restructuring Director
+420 246 042 941
rbase@deloittece.com

Our Czech Republic Restructuring Tax Team

The Czech Tax team has a wealth of experience in the area of restructuring services 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.

Miroslav Svoboda
Tax Partner
+420 246 042 924
msovoboda@deloittece.com

Debt Forgiveness/amendment

The release of debt can lead to tax implications for both a borrower and lending company. Professional advice should therefore be sought on the appropriate restructuring options.

Interest deductibility

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

New rules for thin capitalisation should be applicable from 1 January 2019.

Tax attributes

Part of the value of a target company may be in its accumulated tax losses. In general, tax losses may be carried forward and utilised for up to five years. However, in the case of a substantial change in ownership, the ability to carry forward the loss is subject to certain conditions.

Taxes on disposals of assets

The sale of shares or other assets may result in taxable gains (although the sale of shares may be exempt under the Czech "participation exemption"). A non-resident seller may suffer taxation on any gains unless relief is available under a double taxation treaty.

Subject to certain conditions, asset carve-outs can generally be treated as a tax neutral de-merger with a subsequent tax exempt share deal, instead of an asset deal. This is beneficial as an asset deal is subject to transfer taxes, capital gains taxes (corporate income tax) and, in certain circumstances, VAT.

Tax status in insolvency

During liquidation, outstanding taxes should be agreed and settled with the tax authorities. The liquidator will normally require a clearance from the tax authorities to formally finalise the liquidation.

The complexity of this process depends on a number of factors, including the profile of the operations of the company, its assets and shareholders.

Secondary liabilities

Unsettled liabilities can generally be passed to subsidiaries/parent companies. However, it is necessary that such transactions are compensated on an arm's length basis.

Withholding taxes

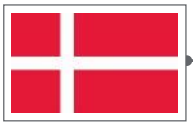
Payments of dividends, royalties and interest to non-residents are generally subject to 15% (worst case 35% applied to payments made to recipients resident in certain off-shore destinations), unless reduced by the EU directive or double tax treaty.

Dividends paid to resident individuals/companies are taxed at 15% unless an exemption applies.

Country specific considerations

Following a successful challenge in the courts, Czech entities involved in a restructuring need to be able to sustain the economic and business substance of a transaction. If one of the main purposes of the transaction is considered to be tax motivated, then it could be considered an abuse of law and respective tax (and penalties) could become due.

Restructuring tax – Denmark



Denmark Restructuring Market Overview

The Nordic restructuring market is currently dominated by the offshore and shipping sectors. While the general economy is strong across the region, the offshore and shipping sectors are severely hit by the extended downturn in the Oil & Gas market.

As the low market demand continues, and more assets comes off long term contracts at above-market rates, the pressure is increasing for more fundamental restructuring solutions.

Andreas Enger
Restructuring Partner
+47 23 27 95 34
aenger@DELOITTE.no

Our Danish Restructuring Tax Team

Danish tax legislation on re-financings and restructurings includes a number of complex rules, where the tax consequences depend on various issues. The Danish tax team has significant experience in this area having advised a wide variety of clients across a variety of transactions.

Søren Reinhold Andersen
Tax Partner
+45 22 20 21 90
soeandersen@deloitte.dk

Lars Petersen
Tax Director
+45 21 72 13 42
lpetersen@deloitte.dk

Debt Forgiveness/amendment

A debt conversion, a capital increase or contribution 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.

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.

Interest deductibility

Denmark has rules that seek to limit third party (and related party) interest tax deductions, which are broadly based on a company's balance sheet and income statement position.

Denmark also imposes a debt-to-equity ratio of 4:1 with regards to related party debt. Interest on debt in excess of this ratio is not-deductible for tax purposes.

Tax attributes

Part of the value of a struggling company may be in its accumulated tax losses (or other deferred tax assets). Danish tax law includes an anti-avoidance provision which restricts the utilisation of tax losses carried forwards in the case of a change of ownership of a company. The provisions around this are complex and advice should be taken prior to any change in ownership.

Taxes on disposals of assets

Generally, capital gains arising on the disposal of shares by company shareholders are exempt from tax. There are certain minor exceptions to this rule for listed shares and certain shares in companies resident in tax havens.

A capital gain realised in connection with the sale of other assets is generally taxable.

Tax status 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 challenges in a joint taxation arrangement, especially in relation to the specific tax rules covering a sale or restart of a business.

Secondary 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).

Withholding taxes

Generally, dividends or interest paid to a foreign company should be subject to Danish withholding tax at a rate of 22%. However, if certain requirements are met the withholding tax could be reduced or eliminated. Please note that the Danish tax authorities have a strong focus on the term 'beneficial owner'.

Restructuring tax – Egypt

Egypt Restructuring Market Overview

Egypt in the middle of 2016, joined the OECD/G20 Group in supporting the BEPS initiative. As a result, Egypt should be ready to realise, using the resources and technical know how shared by the OECD/G20, the same efficiencies as other major and more developed tax jurisdictions.

As a result of this, we expect Egypt, in its central position in the Mediterranean area, to take a prominent role in the region as a production and holding hub, facilitating increased activity in the M&A and restructuring market.

Kamel Saleh
Restructuring & Tax Partner
+20 2 2290 3278
ksaleh@deloitte.com

Our Egyptian Restructuring Tax Team

Egypt has conservative laws and practices regarding debt restructuring, group restructuring, and any other business restructuring. Due to the presence of a General Anti Avoidance rule (GAAR), any restructuring should have sound business reasons behind it. The Deloitte Egypt M&A Team has extensive experience in mergers, de-mergers, group restructurings and acquisitions.

Kamel Saleh
Restructuring & Tax Partner
+20 2 2290 3278
ksaleh@deloitte.com

Giuseppe Campolo
Tax Director
+202 24619909
gcampolo@deloitte.com

Debt Forgiveness/amendment

Debt forgiveness can create a taxable event in Egypt where the release of the debt is considered 'revenue' in the income statement of the borrower company.

Debt capitalisation is also available in Egypt.

Interest deductibility

Egypt has thin capitalisation rules restricting the amount of interest that may be deducted. Any interest on debt exceeding a 4:1 debt-to-equity ratio is disallowed. In addition, the interest rate of a Loan Note cannot exceed two times the *credit and discount rate*, issued by the Central Bank at the beginning of each calendar year.

Tax attributes

Tax losses may generally be carried forward for 5 years. No carry back of losses is permitted, except for losses incurred by construction companies on long-term contracts.

Egyptian legislation treats each entity independently from a tax perspective, hence, in group restructurings, no consolidated approach can be applied.

Taxes on disposals of assets

Capital Gains generated from the selling of shares and assets are generally subject to Corporate Income Tax. Only capital gains derived by a resident or non-resident company from the selling of shares listed on the Egyptian Stock Exchange are subject to a reduced 10% in a separate income tax pool. However, this treatment has been suspended until 17 May 2020.

VAT may also be applicable on the sale of assets.

Tax status in insolvency

If the taxpayer ceases permanently, the actual profits up to the date of cessation must be included in the taxable base for Corporate Income Tax purposes.

A taxpayer who wishes to cease permanently should also request that the Tax Authority confirms their tax status up to the date of cessation.

Secondary liabilities

Where an entity is not able to satisfy its tax liabilities, the shareholders should, indirectly, be responsible for those liabilities.

Withholding taxes

Interest and dividends paid to non-residents are subject to rates of withholding tax at 20% and 10% respectively. These rates may be reduced under a relevant double taxation treaty.

Interest paid on a long-term loan (i.e. a loan with a term of at least 3 years) is not subject to any WHT.

Country specific considerations

A new stamp tax has been introduced for the sale of securities and is calculated based on the gross equity value of the securities and applies for both listed and unlisted, and Egyptian or foreign securities.

Restructuring tax – Estonia

Estonia Restructuring Market Overview

The restructuring market was relatively tentative in 2016 and continued this trend into 2017. Overall political instability, continued pressure on rising interest rates and more stringent lending requirements are likely to increase pressure on potential restructuring activities in 2018.

Monika Kallas
Restructuring Senior Manager
+372 640 6552
mkallas@deloittece.com

Our Estonian Restructuring Tax Team

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.

Mait Riikjärv
Tax Director
+372 6 406 500
mriikjarv@deloittece.com

Debt Forgiveness/amendment

The forgiveness or waiver of a debt is considered to be 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 can often be a better approach. Where this approach is feasible, no taxation should arise for the lender and, to the extent that the capitalisation of debt forms a contribution into a company's equity, it should then be possible to subsequently make non-taxable (capital) distributions to shareholders.

Interest deductibility

Business related interest payments are generally deductible for Estonian tax purposes. However, debt should be advanced in accordance with transfer pricing rules.

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.

Taxes on disposals of assets

Asset and share sales may have tax implications for a seller. As well as income tax, indirect tax aspects of a transaction and possible notary fee charges should also be considered. 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 status in insolvency

In insolvency, it is possible to have reorganisation of enterprise (if the business has potential to be viable once again), bankruptcy or liquidation proceedings. The Estonian tax authorities are ranked pari passu with other creditors. However, in certain circumstances, it is possible to for companies to obtain forgiveness for tax arrears.

Income tax is charged on the amount paid to the shareholders where the proceeds paid exceeds the base cost of the holding.

Secondary liabilities

In the event of a transfer of ownership, the claims and obligations, except the obligation to pay a penalty payment, which are related to the enterprise, transfer to the new owner or recipient.

A person who transfers an enterprise or a part thereof is, together with the transferee, jointly liable for the payment of tax arrears.

Withholding taxes

Estonia levies withholding tax on royalties at 10%.

Estonia does not generally levy withholding tax on interest or dividends.

Restructuring tax – Finland

Finland Restructuring Market Overview

The Nordic restructuring market is currently dominated by the offshore and shipping sectors. While the general economy is strong across the region, the offshore and shipping sectors are severely hit by the extended downturn in the Oil & Gas market.

As the low market demand continues, and more assets comes off long term contracts at above-market rates, the pressure is increasing for more fundamental restructuring solutions.

Andreas Enger
Restructuring Partner
+47 23 27 95 34
aenger@DELOITTE.no

Our Finnish Restructuring Tax Team

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 prior to undertaking a restructuring.

Jani Hirvonen
Tax Partner
+358 20 755 5335
Jani.Hirvonen@deloitte.fi

Pia Stubb
Tax Partner
+358 20 755 5449
Pia.Stubb@deloitte.fi

Debt Forgiveness/amendment

A taxable release may arise when a borrower has its debt waived or forgiven. However, if it can be supported that the loans have no value, the release should not create taxable income. As this area is often subject to scrutiny by the tax authorities, a conversion of debt into equity can, in certain cases, be a better alternative for tax purposes.

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

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.

Tax attributes

Tax losses are forfeited if more than 50% (cumulatively) of a company's share capital changes 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.

Taxes on disposals of assets

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

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.

Tax status in insolvency

There are no tax groups in Finland for corporate income tax purposes. The tax status of an entity does not otherwise change when it enters insolvency proceedings.

Secondary liabilities

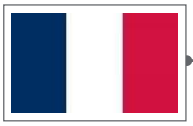
In principle, there are no legal provisions that could enable secondary liabilities to be levied on a parent company/owner in the case a company, established as a limited liability company.

Withholding taxes

Interest payments to non-residents do not generally suffer withholding tax.

Dividends and royalties paid to non-residents are subject to withholding tax of 20% (where the beneficial owner is corporate entity) or 30% (where the beneficial owner is an individual or unknown), unless the beneficial owner qualifies for reduced rate based on e.g. domestic legislation, double tax treaty or an EU directive.

Restructuring tax – France



France Restructuring Market Overview

In 2016, the French market was characterised by strong uncertainties due to a presidential election and reforms in the restructuring legislation. 2017 has shown a decrease in the number of insolvencies as a result of a recovery in the French economy. In addition, there has been an increase in the number of out-of-court proceedings confirming the interest for stakeholders to use contractual solutions over judicial procedures.

Jean-Pascal Beauchamp
Restructuring Partner
+33 1 58 37 93 44
jebeauchamp@deloitte.fr

Our French Restructuring Tax Team

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. The Deloitte France Restructuring team are very experienced in this area having advised on a wide variety of transactions.

Sarvi Keyhani
Tax Partner
+33 1 40 88 70 23
skeyhani@taj.fr

Debt Forgiveness/amendment

A partial or full release of existing debts will generally result in a non-deductible expense for the lender, with the release credit being treated as a taxable profit for the borrower.

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 assignment of a loan may be characterised as a taxable debt waiver followed by a new loan if certain legal formalities are not fulfilled. Modifications of a loan, if characterised as a novation (i.e. new loan), can have additional tax implications if not carefully considered.

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.

Tax attributes

As a general rule, tax losses can be carried forward indefinitely and there are no restrictions following a change in ownership of the companies' shares. However, tax losses can be forfeited in case of significant change of activity or in certain business restructuring, whose criteria are specified by the French tax law.

The offset of tax losses in a given year is subject to certain restrictions.

Taxes on disposals of assets

The sale of shares or other assets may result in taxable gains. A substantial shareholding exemption may apply to gains arising on the sale of shares.

In addition, the purchaser may also be subject to transfer taxes.

Tax status in insolvency

As a general principle, companies in insolvency are subject to standard taxation provisions. There are also some favorable rules for the use of losses that should be considered.

Secondary liabilities

If a tax consolidation group is in place, all entities in the tax consolidation group are jointly and severally liable for taxation due by the parent company in case of failure of payment.

Withholding taxes

Dividends paid to non-residents is subject to withholding tax at 30% unless an exemption or a reduced rate is available under the EU parent-subsidiary directive (as transposed into French law) or an applicable double taxation treaty.

Under French domestic law, interest payments should not be subject to French withholding taxes provided that that the bank account into which the interest is paid is not opened in a "non-cooperative" jurisdiction.

Restructuring tax – Germany

Germany Restructuring Market Overview

Low interest rates and a very strong economy in Germany has so far led to a fairly quiet German restructuring market in 2017. However, latest market intelligence suggests that Restructuring activities might increase again in 2018 in key sectors such as retail, energy and financial services.

Andreas Warner
Restructuring Partner
+49 89 29036 8022
anwarner@deloitte.de

Our German Restructuring Tax Team

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

Marcus Roth
Tax Partner
+49 89 29036 8278
mroth@deloitte.de

Nevin Borucu
Tax Manager
+49 89 29036 8105
nborucu@deloitte.de

Debt Forgiveness/amendment

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 the market value is lower) is treated as taxable income for the borrower. 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.

Interest deductibility

There are rules which limit the ability to deduct financial expenses in Germany. These rules should be considered when restructuring debt, or a group.

Deductibility of interest expenses is generally restricted to 30% of taxable EBITDA.

Tax attributes

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, exemptions are available.

Please note that, 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.

Taxes on disposals of assets

The sale of shares by a corporation is generally tax exempt. However, transfer taxes such as Real Estate Transfer Tax must be observed.

Gains realised on other assets are generally taxable.

Tax status in insolvency

The extent and volume of tax risks arising on acquisition of a business during 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.

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.

Withholding taxes

Dividends paid to a non-resident are subject to a 25% withholding tax (26.375%, including the solidarity surcharge). Withholding tax generally is not levied on interest, except for certain circumstances where the rate is the same as that for dividends. Withholding taxes may be reduced under a treaty or an EU directive.

Restructuring tax – Greece

Greece Restructuring Market Overview

The Greek economy is still very weak but has showed some positive signs. The banking sector remains the industry where restructuring activity is most focussed, with activity expected to increase in 2018. This restructuring activity will also stimulate M&A activity in the country as liquidity is still restricted and the bank financing remains low.

Alexis Hadjipavlou
Restructuring Partner
+302106781349
ahadjipavlou@deloitte.gr

Our Greek Restructuring Tax Team

Deloitte Greece has a dedicated team of experienced professionals that can help 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; all of which should be considered in detail prior to restructuring a group.

Stylianos Kyriakides
Tax Partner
+302106781358
stkyriakides@deloitte.gr

Konstantinos Roumpis
Tax Senior Manager
+302106781272
kroumpis@deloitte.gr

Debt Forgiveness/amendment

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, tax losses can be used to offset the taxable income.

Assignments and novation's of debt and the associated potential capital tax and stamp duty exposures need to be carefully considered.

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.

Tax attributes

Tax losses may be carried forward for five consecutive tax years. Carry forward of losses may be forfeited 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.

The carry-back of losses is not permitted.

Taxes on disposals of assets

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 status in insolvency

Insolvent reorganisations may enjoy certain tax exemptions, subject to certain conditions. Selling a business in the context of an insolvency reorganisations may entail tax savings for the investor.

Secondary liabilities

Certain individuals may be considered jointly liable for the payment of taxes assessed against a legal entity. These individuals may include the chairman of the board, managers, directors, managing directors, and liquidators.

Withholding taxes

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.

Country specific considerations

Taxes imposed on the transfer of shares or a business should be carefully considered, as they can range from 0.2 – 29%. Stamp taxes, or other levies, may also apply to other transactions.

Restructuring tax – Hungary

Hungary Restructuring Market Overview

In line with economic developments in recent years, as well as a general increase in real estate prices, the restructuring market has become more active since last year (especially therefore for businesses with real estate).

This restructuring market is expected to be busier in 2018, with significant financial restructurings in 2017 setting a precedent.

Balazs Biro
Restructuring Partner
+36 1 428 6865
bbiro@deloittece.com

Laszlo Posfay
Restructuring Senior Manager
+36 1 428 6492
lposfay@deloittece.com

Our Hungarian Restructuring Tax Team

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

Ferenc Póczak
Tax Director
+36 (1) 428 6755
fpoczak@deloittece.com

Gabriella Kocsis
Tax Senior Manager
+36 (1) 428 6602
gkocsis@deloittece.com

Debt Forgiveness/amendment

The release of debt can create taxable income in a borrower company. There are various ways to manage this taxable income, however such transactions are being scrutinised by the Hungarian tax authorities and therefore appropriate analysis is required to avoid a reclassification as a taxable event by the authorities.

Interest deductibility

Interest is deductible subject to thin capitalisation rules. A 3:1 debt-to-equity ratio applies to all loans including interest bearing loans and non-interest bearing if a downward transfer pricing adjustment is applied. Banks loans are excluded.

Tax attributes

Tax losses accumulated by a Hungarian company can be lost on a change of ownership (or on a restructuring) if the nature and the circumstances of the business operation changes or specific conditions are not met.

Tax losses can be utilised against up to 50% of taxable income in a given year. Tax losses generated before 2015 can be used indefinitely, but not later than 2025. Tax losses generated from 2015 can be carried forward for no more than 5 years. Losses must be used on a FIFO basis.

Taxes on disposals of assets

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 may also be available at the Hungarian shareholder's level.

The sale of shares or other assets may result in taxable gains. The participation exemption may exempt capitals gains on the sale of shares.

Tax status in insolvency

At the start of an insolvency procedure, a company ceases to be a corporate taxpayer. If the company continues its activity after the completion of the insolvency procedure, it becomes a corporate taxpayer again and any gain or loss realised in its equity during the insolvency procedure should increase or decrease its taxable income.

Secondary liabilities

Tax liabilities are, in principle, inherited by legal successors. If a company is closed without legal succession, its shareholders may be liable to settle the company's unsettled tax liabilities only in certain cases depending on the legal relationship between the company and its shareholders.

Withholding taxes

Hungary does not impose withholding taxes on any payments made to foreign persons other than individuals.

Country specific considerations

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.

From 2017, Hungary reduced its corporate tax liability to a flat rate of 9% on all taxable income.

Restructuring tax – Iceland

Our Iceland Restructuring Tax Team

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

Deloitte Tax and Legal in Iceland works closely with colleagues across the Deloitte network to provide tailored advice for clients.

arni Thor Bjarnason
Tax Partner
+354 580 3310
bjarni.thor.bjarnason@deloitte.is

Gudbjorg Thorsteinsdottir
Tax Senior Manager
+354 580 3082
guthorsteinsdottir@deloitte.is

Debt Forgiveness/amendment

The release of debt generally creates taxable income in a borrower company. However, debt forgiveness may create non-taxable income in an appropriately structured debt to equity transaction.

Interest deductibility

From 1 January 2017, tax deductible interest on loans from foreign related parties is generally restricted to 30% of an entity's tax EBITDA (subject to a 100m ISK de minimis). A broader authorisation to deduct interest applies in respect of third party debt.

Tax attributes

Accumulated tax losses are often one of a struggling company's few valuable assets. It is important to adhere to the strict rules of the Iceland Income Tax Act to ensure that losses are preserved through any form of transaction or restructuring.

Taxes on disposals of assets

Disposals of assets in the restructuring process may 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 or transfer of other assets is always a taxable transaction. However, in appropriately structured mergers and demergers, the transfer of assets may be exempt from taxation.

Tax status in insolvency

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

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 split up for tax purposes. Certain tax liabilities may also be passed to other entities as a result of a merger or demerger.

Withholding taxes

Interests and dividends paid to non-Icelandic residents may be subject to 10-20% withholding tax unless an exemption or a reduced rate is available under an applicable double taxation treaty.

Restructuring tax – Ireland

Ireland Restructuring Market Overview

Ireland's insolvency market continues to be buoyant, primarily driven by private equity firms increasing the volume of enforcements on their borrowers as they seek to capitalise on rising property prices.

Uncertainty around Brexit and the consequent reduction in the value of Sterling will present challenges for the export and tourist sector which in turn could lead to an increase in insolvency activity in these sectors.

Ken Fennell
Restructuring Partner
+35314178803
kfennell@deloitte.ie

Our Irish Restructuring Tax Team

The RS Tax team in Ireland has considerable experience in this area having advised on many transactions in recent years, both in restructuring Irish businesses and in using Ireland as a holding jurisdiction on the acquisition of distressed businesses elsewhere. In the absence of detailed and clear tax legislation, experience in dealing with the Irish tax authorities and knowledge of precedent is important.

Conor Hynes
Tax Partner
+35314172205
chynes@deloitte.ie

Padraic Whelan
Tax Partner
+35314172848
pwhelan@deloitte.ie

Debt Forgiveness/amendment

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 restrictions in relation to capital losses where debt is being forgiven.

Interest deductibility

Ireland has complex interest rules depending on the activity concerned (e.g. investment or trading activities). Relief for interest is generally given on an accruals basis as an expense if the borrowing is incurred wholly and exclusively for the purposes of the trade or rental business.

Where the borrower uses the funds to lend or to buy ordinary shares in a company carrying on a trade or rental business, interest paid on these borrowings may be allowed as a deductible expense on income.

Interest payments can be reclassified as a dividend distribution in certain circumstances, and deductions for expenses are therefore denied.

Tax attributes

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

Taxes on disposals of assets

The sale of shares or other assets may result in taxable gains, although an exemption may be available on the sale of shares.

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.

Tax status in 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.

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).

Withholding taxes

Dividends and other profit distributions, interest payments and patent royalty payments made by a resident company to a non-resident are generally subject to a 20% withholding tax. These rates can be reduced where a double taxation treaty, or domestic exemptions are available.

Restructuring tax – Isle of Man

Isle of Man Restructuring Market Overview

The multi-jurisdictional nature of many offshore structures continues to drive demand for corporate simplification work in the Isle of Man, where local tax, regulatory insolvency and, more recently, operational expertise is important in maximising shareholder value.

Alongside this, whilst the islands have never been part of the EU, the importance of the UK market to them means the impact of Brexit will also be felt offshore.

Alex C Adam
Restructuring Director
+44 1481 703 214
acadam@deloitte.co.uk

Andy Wood
Restructuring Senior Manager
+44 1534 82 4237
andywood@deloitte.co.uk

Our Isle of Man Restructuring Tax Team

The Isle of Man has a favourable tax regime with the result that most company restructuring transactions can be undertaken free-of-tax. Deloitte has strong local links with the Isle of Man Income Tax Division which means that more complex arrangements can be discussed with the Assessor if needed.

Sean Beech
Tax Partner
+44 151 242 9109
sbeech@deloitte.co.uk

Debt Forgiveness/amendment

The Isle of Man does not generally levy corporate income taxes or withholding taxes on companies (with the exception of banking activities, retail business and income derived from land or property) and therefore debt forgiveness and corporate disposals can generally be undertaken in a tax free manner.

Interest deductibility

Normal business expenses including interest incurred are fully deductible in computing taxable profits which arise in respect of taxable activities.

Tax attributes

Losses incurred in respect of taxable activities may be carried forward indefinitely, or carried back for one year.

Taxes on disposals of assets

Capital gains are not subject to tax.

Tax status in insolvency

With the approval of the Isle of Man Assessor, a company incorporated in the Isle of Man but managed and controlled elsewhere, may, in certain circumstances, be regarded as non-resident. Non-resident companies are subject to tax on their Isle of Man source income only.

Secondary liabilities

Not applicable.

Withholding taxes

There is a 0% withholding tax on dividends. Loan interest paid by a company is also subject to a 0% withholding tax unless the income source derives from Isle of Man land and property (then 20%).

Restructuring tax – Israel

Our Israel Restructuring Tax Team

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.

Yitzchak (Chiko) Chikorel
Tax Partner
+972-3-6085511
Ychikorel@deloitte.co.il

Guy Blau
Tax Senior Manager
+972-73-3994393
Gblau@deloitte.co.il

Debt Forgiveness/amendment

The release of debt can create taxable income in a borrower entity. Depending on the circumstances, the borrower entity may also be subject to VAT on any income created.

In addition, debt push down may be classified by the Israeli tax authority as a dividend distribution subject to withholding tax.

Interest deductibility

There are no thin capitalisation rules in Israel. Interest expenses are deductible provided they are considered as business expenses. There are, however, restrictions with respect to interest deductions in holding companies.

Tax attributes

Several restructuring schemes provided by the Israeli Tax Ordinance (ITO) impose restrictions on participants. One of these limitations is that the ability to utilise brought forward tax losses accumulated prior to the restructure may be restricted after the restructuring. There are also restrictions with respect to losses following a change in control of an entity.

Taxes on disposals of assets

If the tax deferral regime is accessed (an ITO scheme), the ability to dispose of shares granted in a restructuring is limited for up to two years following the end of the tax year in which the merger has occurred (Lock-Up). The ITO may set a longer cumulative restriction period if the restructuring consists of several steps, each of them considered as a restructure subject to limitations.

Careful consideration prior to any restructuring can ensure that participants are able to mitigate the risk of time restrictions.

Tax status in insolvency

In insolvency, tax liabilities have priority and are normally required to be settled first.

In the event of debt forgiveness due to an entity insolvency, it is possible to avoid income tax liabilities and VAT if the insolvency led to a liquidation.

Secondary liabilities

Generally, liabilities of a company will not be passed to others. However, in certain circumstances such as fraud, the Israeli court will allow lifting the corporate veil so the company's liabilities will be attributed to the shareholders.

Withholding taxes

Generally, every transaction is subject to withholding tax. It is always the purchaser's responsibility, even if they are not an Israeli resident, unless the Israeli tax authority provides a tax exemption approval.

Country specific considerations

The Israeli Tax Ordinance (ITO) provides a relatively extensive options 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. It is important to carefully examine in advance the restructuring in order to be aligned with the conditions and limitations and mitigate tax exposures.

Restructuring tax – Italy

Italy Restructuring Market Overview

The Italian Restructuring Market continued to decline in 2017 with the exception of the NPL market, which showed a high level of activity. This is expected to continue in 2018. Transactions and bailouts involving 2nd tier banking groups also created a boost in the market.

A significant evolution in restructuring legislation is expected to be approved in the 4th quarter of 2017, bringing smoothness and rapidity to the insolvency procedures, both when using in-court and out-of-court processes.

Andrea Giovanelli
Restructuring Partner
+39 0283323098
agiovanelli@deloitte.it

Our Italian Restructuring Tax Team

The Italian legal framework has recently 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, the importance of taking appropriate tax advice cannot be understated.

Stefano Zambelli
Tax Partner
+39 06 48990973
szambelli@sts.deloitte.it

Oliver Riccio
Tax Partner
+39 0648990963
oriccio@sts.deloitte.it

Debt Forgiveness/amendment

A number of tax implications need to be considered within insolvency procedures and restructurings, such as the treatment of impairment 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, both from the standpoint of the seller/lender as well as the buyer and the borrower.

Interest deductibility

Under Italian law, the deduction of interest expense is generally capped at 30% of EBITDA, which is broadly within the BEPS Action 4 indications. This should be monitored for future developments.

Tax attributes

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

Taxes on disposals of assets

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 the availability of the participation exemption regime to share disposals). Interpretations by the Italian Courts and Tax authorities on indirect taxes applicable to certain share deals should be monitored.

Tax status in insolvency

The right to join a tax consolidation might be jeopardised in an insolvency procedure, in cases where the lenders should exercise their right to take over the voting rights in the shareholders' meetings, if entitled to do so within their rights as pledgee in a default environment.

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).

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.

Country specific considerations

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.

Restructuring tax – Kazakhstan

Our Kazah Restructuring Tax Team

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.

Anthony Mahon
Tax Partner
+77272581340
anmahon@deloitte.kz

Aliya Tokpayeva
Senior Manager
+77172580480
atokpayeva@deloitte.kz

Debt Forgiveness/amendment

Under Kazakhstan tax legislation, the debt forgiveness by a creditor can create taxable income in the hands of a borrowing company.

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.

Interest deductibility

Interest expenses are generally deductible on an accruals basis, however interest paid to banks is only deductible on a cash paid basis. This can have consequent implications for funding structures (e.g. payment in kind notes are not tax effective).

Interest deductibility may also be subject to thin-capitalisation restrictions.

Tax attributes

Accumulated tax losses may be carried forward for up to 10 years irrespective of a change in ownership.

Kazakhstan tax law does not permit the transfer of losses where a company undertakes a restructuring by way of a merger, unless such a reorganisation is initiated by the decision of the local government.

Taxes on disposals of assets

Kazakhstan's domestic tax legislation includes extensive, widely drawn non-resident gains taxing provisions. This is therefore key to monitor.

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.

Tax status in insolvency

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

Secondary liabilities

Aside from insolvencies, where shareholders bear responsibility for any liabilities on a pro rata basis, Kazakhstan does not enforce secondary liabilities.

Withholding taxes

Business profits from rendering services (those falling within the scope of Kazakh-source income) are generally subject to 20% withholding tax, unless exempt under a relevant double tax treaty.

Interest, dividends and capital gains paid to non-residents are subject to withholding tax at 15%, unless an exemption or a reduced rate is available under an applicable double taxation treaty.

Restructuring tax – Latvia

Latvia Restructuring Market Overview

Recently Latvia has adopted corporate tax reform and the corporate taxation system is to significantly change from
1 January 2018. Therefore, much of the restructuring activity in the market is in fact being undertaken in anticipation of the changes in tax law.

Janis Cupans
Restructuring & Tax Partner
+371 6 7074171
jcupans@deloittece.com

Our Latvian Restructuring Tax Team

From 1 January 2018, Latvia will apply a new corporate tax regime, based on a cash-flow taxation model. This new tax regime means that corporate income tax is payable when profits are distributed (including deemed profit distributions) at 20%.

Latvian Deloitte tax professionals can help companies and groups assess their current organisational structure in line with the possible impacts of the reform to prepare them for the necessary changes. Business model reviews and necessary restructurings might need to be undertaken before the 2017 year-end.

Janis Cupans
Restructuring & Tax Partner
+371 6 7074171
jcupans@deloittece.com

Aija Klavinska
Tax Senior Manager
+371 67 074 185
aklavinska@deloittece.com

Debt Forgiveness/amendment

The release of debt 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. Tax authorities may challenge the restructuring process where part of the debt is forgiven and this not in line with the market conditions.

Interest deductibility

Starting from 1 January 2018, Latvia will apply an interest deduction limitation rule based on 30% of EBITDA. The new rule will apply together with existing thin capitalisation provisions.

Tax attributes

In principle, it is still possible, subject to conditions, to carry forward tax losses following a change in control, a merger or a demerger.

From 1 January 2018, the concept of tax losses will be lost. However, for a transitional period of 5 years, 15% of the balance of unrelieved losses as at 31 December 2017 may be applied as a tax credit each year to reduce the tax payable, subject to a maximum reduction of 50% of the tax payable.

Taxes on disposals of assets

The sale of shares is generally tax exempt. The sale of other capital assets is generally taxable.

For non-residents, capital gains from the sale of shares is not generally subject to taxation in Latvia, except where the gains are derived from the sale of real estate or real estate rich subsidiaries. In addition, as of 2018, a 3% withholding tax will be also be applied to proceeds from these disposals.

Tax status in insolvency

No special status.

Secondary liabilities

The inability of a company to meet its own tax liabilities should not result in those liabilities being passed to other companies in a group or owners (with exceptions for VAT groups).

Withholding taxes

There is generally no withholding tax on interest or dividends (whether paid to an EU or non-EU company). However, dividends and interest payable to persons resident in a black list jurisdiction may be subject to 15% withholding tax (20% from 1 January 2018).

Restructuring tax – Lithuania

Lithuania Restructuring Market Overview

The restructuring market in Lithuania has been relatively quiet in 2017, largely due to a strong macro economic environment.
No major changes are expected for 2018 as the economy is forecasted to remain strong.

Kristine Jarve
Restructuring & Tax Partner
+371 67 074 112
kjarve@deloittece.com

Our Lithuanian Restructuring Tax Team

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

Kristine Jarve
Restructuring & Tax Partner
+371 67 074 112
kjarve@deloittece.com

Debt Forgiveness/amendment

Under Lithuanian Law on Corporate income tax, forgiven debt is considered to be taxable income for the borrower and a non-deductible expense for the lender.
The capitalisation of an existing debt should, however, not trigger any taxable income for the borrower.

Interest deductibility

Generally, interest in respect of debt used to make specific acquisitions can 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. In practice the economic reasoning for the merger is frequently challenged by the Lithuanian tax authorities and, in practice, in many cases, interest deductions after the subsequent merger can be denied.
In addition to the above, when evaluating interest deductibility, thin capitalisation rules should be taken into account where interest is paid to certain related parties. In this case, a debt-to-equity ratio of 4:1 applies, and any interest attributable to the debt in excess of this ratio is generally non-deductible (certain exceptions apply).

Tax attributes

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 can be carried forward by the acquiring entity provided that the acquiring entity will carry on the same business activity for a period of no less than 3 years.
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.

Taxes on disposals of assets

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 status in insolvency

Where an entity in liquidation distributes assets to its shareholders, such a distribution is treated as a sale of assets at market value. In this case, any gain realised on the distribution of assets is treated as taxable income of the company in liquidation. Shareholders receiving the assets from the subsidiary under liquidation may also incur taxable income due to such transfer.

Secondary liabilities

The inability of insolvent company to meet its own tax liabilities may, in specific circumstances, result in those liabilities being passed to the management or shareholders of a company.

Withholding taxes

Interest and dividends paid to foreign entities is generally subject to withholding tax at 10% and 15% respectively. The rate suffered may be reduced under a domestic exemption, a relevant double taxation treaty or an EU directive. "Payment" includes settlement in kind, for example through a debt-for-equity swap.

Restructuring tax – Luxembourg

Luxembourg Restructuring Market Overview

We are seeing an uptick in corporate simplification engagements, with intermediary holding companies being liquidated due to changes in tax reporting requirements. In addition, we are also seeing certain liquidation engagements arising from suspicion of fraud or asset misappropriation.

The impacts of the FACTA/CRS reporting, the exchange of information between tax authorities or MIFID II on fund distribution in the restructuring market have yet to be seen but are likely to arise in due course.

Michael JJ Martin
Restructuring Partner
+352 45145 2449
michamartin@deloitte.lu

Eric Collard
Restructuring Partner
+352 45145 4985
ecollard@deloitte.lu

Our Luxembourg Restructuring Tax Team

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.

Dany Teillant
Tax Partner
+ 352 451 452 246
dteillant@deloitte.lu

Philippe Nowak
Tax Director
+ 352 451 452 606
pnowak@deloitte.lu

Debt Forgiveness/amendment

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.

Interest deductibility

Arm's length interest paid/accrued (other than interest on certain profit sharing bonds and hybrid instruments treated as equity) is in principle deductible for Luxembourg tax purposes.

The Luxembourg tax authorities may consider any interest in excess of the arm's length rate as a hidden profit distribution. This has significant implications for interest deductibility and withholding taxes may be applied.

Tax attributes

The carry forward of tax losses incurred from 1 January 2017 is limited to 17 years. Tax losses incurred between 1 January 1991 and 31 December 2016 must be deducted first, but may still be carried forward without any limitation in time. There is no restriction to the amount of taxable income that can be reduced annually by tax losses.

Taxes on disposals of assets

The sale of shares or other assets may result in taxable gains except where specific exemption regimes are applicable, such as the participation exemption.

Transfer taxes may apply on the sale of debt instruments issued against Luxembourg real estate assets.

Tax status in insolvency

In the event that a Luxembourg company, which is member of a tax group, ceases to exist as a result of insolvency (bankruptcy) within the first 5 years of tax grouping, the Luxembourg tax authorities will assess the company and the other members of the tax group as if the company (and its subsidiaries, if any) had never been a member of the tax group. The assessment will then apply retroactively for each entity.

Secondary liabilities

The members of a tax group are held jointly and severally liable for all the taxes (covered by the tax grouping regime) due by all the members of the tax group for the period of the tax consolidation.

In specific circumstances, directors or shareholders of a company may be held liable for unpaid taxes.

Withholding taxes

Dividends paid by a Luxembourg company are, in principle, subject to Luxembourg WHT at a rate of 15% on the gross payment (17.65% on the net payment) unless a double tax treaty applies or the conditions of the participation exemption regime are met. Luxembourg does not levy withholding tax on interest.

Country specific considerations

The Luxembourg securitisation regime provides a legal and tax neutral environment for securitisation transactions realised through Luxembourg. Luxembourg securitisation vehicles are notably commonly used for the securitisation of portfolios of loans (e.g. from a financial establishment).

Restructuring tax – Malta

Malta Restructuring Market Overview

The local economy continues to perform very strongly on all fronts with a buoyant real estate market supported by increasing foreign investment. However, the economy is highly dependent on tourism and difficulties in the aviation industry may therefore lead to a slow down in the economy in 2018.

With an ever increasing number of real estate projects being lined up, the country risks seriously over heating through excess supply.

Raphael Aloisio
Restructuring Partner
+356 2343 2700
raloisio@deloitte.com.mt

Our Maltese Restructuring Tax Team

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.

Conrad Cassar Torregiani
Tax Partner
+356 2343 2716
ctorregiani@deloitte.com.mt

Marc Alden
Tax Partner
+356 2343 2712
malden@deloitte.com.mt

Debt Forgiveness/amendment

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 it is considered to be of a capital nature.

Interest deductibility

Generally, interest deductions are only available to the extent that such interest cost is incurred wholly and exclusively in the production of income.

Tax attributes

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.

Taxes on disposals of assets

Maltese tax law includes various exemptions that are invaluable in restructurings. Where certain conditions are met, mergers, demergers, divisions, the transfer of shares and amalgamations may be performed on a tax neutral basis.

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.

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

Tax status in insolvency

The Liquidator of an insolvent company is responsible for any taxes due by the company and is not able to distribute any assets of the company unless provision is made for the full payment of any tax of which the liquidator knows, or might reasonably expect, to be payable by the company.

Secondary liabilities

Malta does not have legal provisions in place to enforce secondary liabilities.

Withholding taxes

Generally, Malta does not levy withholding tax on payments of dividends, interest or royalties to non-residents.

Country specific considerations

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 otherwise available.

Restructuring tax – Netherlands

Dutch Restructuring Market Overview

The restructuring market in the Netherlands has been relatively slow in 2017 as the local economy has picked up, interest rates are low and equity is readily available. Moving into 2018, we expect that certain sectors will continue to face challenges such as Retail, Shipping, Healthcare and Oil and Gas field services. Although these sectors face challenges we do not expect the restructuring activities to pick up significantly.

Eddie van Dinther
Restructuring Partner
+31882880681
EvanDinther@deloitte.nl

Our Dutch Restructuring Tax Team

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

Michiel van de Velde
Tax Director
+31882888672
MvandeVelde@deloitte.nl

Waiver of debt/amendment

In principle, a waiver of debt will crystallise a taxable credit for the debtor unless the waiver is structured correctly. In addition, this taxable credit may benefit from a tax exemption where certain conditions are met.

Special attention is required where creditors and debtors are tax grouped for Dutch CIT 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.

Interest deductibility

The Netherlands has several interest deductibility limitation rules that apply to both related party and third party debt. Within the process of any debt restructuring, the potential impact of these rules should be duly considered.

Tax attributes

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

Taxes on disposals of assets

Any capital gains realised on the disposal of assets is generally subject to 25% corporate income tax (20% for the first EUR 200,000 of taxable amount). Capital gains realised on and dividends received from qualifying participations are exempt under the Dutch participation exemption.

Tax status in insolvency

The Dutch tax authorities generally have preference over regular creditors, including in certain circumstances preference over creditors of secured liabilities relating to certain (movable) assets. Further, in certain situations the Dutch tax authorities need to be informed of a restructuring of certain (movable) assets prior to the restructuring.

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.

Secondary liabilities

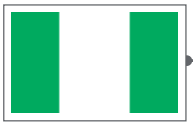
For tax collection purposes, all entities that are part of a fiscal unity for CIT or VAT purposes remain jointly and several liable for all fiscal unity CIT or VAT liabilities relating to the period the companies are part of the fiscal unity.

Withholding taxes

Profit distributions are subject to 15% dividend withholding tax, unless exempt or reduced under applicable tax treaties. A (draft) bill has been proposed to expand the dividend withholding tax exemption to include tax treaties with non-EU/EEA countries provided certain conditions are met

The Netherlands does not levy withholding tax on at arm's length interest payments and royalties.

Restructuring tax – Nigeria



Our Nigeria Restructuring Tax Team

The Mergers and Acquisitions Tax team is responsible for providing restructuring tax advice in Nigeria. The team has a wide experience of advising business owners, investors, lenders, borrowers, management and shareholders on restructuring, insolvency and financing projects with an in-depth consideration of the various aspects of the relevant legislation.

The team provides tailored advice to both local and international clients across various industries on the tax and regulatory implications of their proposed investments or transactions within the purview of the Nigerian tax jurisdiction.

Seye Arowolo
Tax Partner
+234 (0) 705 400 6113
oarowolo@deloitte.com.ng

Tosin Adedoyin
Tax Manager
+234 809 015 8160
oadedoyin@deloitte.com.ng

Debt Forgiveness/amendment

In Nigeria, debt forgiveness/amendment typically results in taxable income in the hands of the borrower.

Generally, any interest previously deducted on forgiven debt will be subject to income tax.

The rules around the treatment of the principal of the debt are unclear. The release of the principal could either be categorised as general income of the company subject to tax at 32%, under income tax rules, or that the principal value of a loan forgiven may be treated as a capital sum and subjected to capital gains tax, charged at a lesser rate of 10%. Appropriate advice may help to ensure that the principal is subjected to the lower rate of taxation at 10%.

Interest deductibility

Tax deductible interest is restricted to interest on loans used for the benefit of a company's business profit. All loans should be advanced and priced at arm's length.

Tax attributes

The value of a target company includes its unutilised tax losses and capital allowances. The modality for the restructuring will determine the ability to carry forward losses.

Taxes on disposals of assets

The sale or transfer of assets may result in taxable chargeable gains. There are however certain provisions that could reduce or defer payment of the amount of tax payable on such chargeable gains. The tax authorities possess powers to adjust the terms of a transaction where it is deemed not to be at arm's length.

Other transfer taxes such as VAT, stamp duties etc., may also apply to the disposal of assets.

Tax status in insolvency

The tax status or treatment of income and expenses of an insolvent company remains the same. A company that decides to permanently cease business operations (including where it is unable to meet its obligation) is required to file cessation returns (based on final/liquidation financial statement) with the tax authority.

Nigerian tax laws provides a different basis for ascertaining the profits of such business for the year of cessation and previous year.

Secondary liabilities

Typically, the tax liabilities of a company cannot be transferred to its parent companies or shareholders. However, in the case of a merger, take-over or business transfer, one of the companies involved may opt to undertake the payment of all taxes due prior to the restructuring.

In this regard, the company is required to obtain clearance with respect to any tax that may be due or payable.

Withholding taxes

Interest payments, professional fees and other qualifying transactions incurred in connection with restructuring activities may be subject to withholding tax at either 5% or 10% based on nature of the transaction and the status of the service provider.

Country specific considerations

There are certain tax incentives contained within Nigerian tax law for entities entering into a restructuring arrangement, provided relevant approvals are obtained from the tax authority.

Restructuring tax – Norway

Norway Restructuring Market Overview

The Nordic restructuring market is currently dominated by the offshore and shipping sectors. While the general economy is strong across the region, the offshore and shipping sectors are severely hit by the extended downturn in the Oil & Gas market.

As the low market demand continues, and more assets comes off long term contracts at above-market rates, the pressure is increasing for more fundamental restructuring solutions.

Andreas Enger
Restructuring Partner
+47 23 27 95 34
aenger@DELOITTE.no

Our Norwegian Restructuring Tax Team

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

Audun Froland
Tax Partner
+47 91 34 89 97
afroland@deloitte.no

Henriette Holmen
Tax Senior Manager
+47 23 27 96 89
hholmen@deloitte.no

Debt Forgiveness/amendment

The release of debt may 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.

A taxable deemed release may also 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.

Interest deductibility

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.

There are proposals to extend this restriction to interest on external debt. This area should therefore be monitored carefully moving forwards.

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 tax previously paid can be refunded.

Taxes on disposals of assets

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 taxable gains.

Tax status in insolvency

A bankruptcy estate is only liable to pay taxes on net income arising in respect of a business operated on behalf of the estate. If the bankruptcy estate terminates the business as quickly as possible, it should not be deemed to be carrying on a business and therefore any income or profit that arises during this period should not be taxable.

Secondary liabilities

Generally, there are no secondary liabilities for tax. However, there are certain exceptions in the case of liquidations, demergers and liabilities for damages.

Withholding taxes

Norwegian withholding tax of 25% applies on dividends distributed to foreign shareholders. This rate may, however, be reduced by the application of the Norwegian participation exemption or an applicable tax treaty.

There is currently no withholding tax on payments of interest or royalties. There are proposals to introduce withholding tax on interest and royalties that should be monitored.

Restructuring tax – Poland

Poland Restructuring Market Overview

The Polish restructuring market continues to develop slowly under new restructuring laws. The macroeconomic environment is generally favourable with low interest rates, increased consumption and growing investment demand.

In 2017/2018 labour intensive industries such as construction, heavy engineering and transportation services will face the impact of shrinking availability of labour force and increasing salary costs.

Tomasz Ochrymowicz
Restructuring Partner
+48 22 5110456
tochrymowicz@deloittece.com

Our Polish Restructuring Tax Team

The Polish tax environment is currently undergoing significant changes, which may have a profound impact on restructuring processes. The amendments to be introduced are mainly aimed at minimising erosion of tax bases.

The Polish Tax Team has broad experience with regard to restructurings and provides lenders, borrowers and investors from all geographies with up-to-date analysis and advice concerning various possible scenarios.

Ewa Grzejszczyk
Tax Partner
+48 22 5110323
egrzejszczyk@deloittece.com

Jan Wasilewski
Tax Director
+48 22 5110810
jwasilewski@deloittece.com

Debt Forgiveness/amendment

As a rule, the forgiveness or waiver of loans can create taxable income in a borrower company (with some exceptions, e.g. insolvency proceedings) as well as result in a non-tax deductible cost for the lender (again, with certain exceptions).

Interest deductibility

In general, interest is tax-deductible on a paid basis. Poland features thin capitalisation that is either based on a gearing ratio or on the value of a borrowers assets and operating profit. There are plans to replace the current thin capitalisation rules from 2018 with a limit of 30% "tax-EBITDA" which is applied to both third party and related interest expense, and to deny interest deductions arising from debt push-downs.

Tax attributes

In general, the tax loss from a particular year can be carried forward for up to 5 consecutive tax years. However, in a single tax year only a maximum of 50% of the tax loss carried forward may be used. There are plans to limit utilisation of losses to allow their set-off only with income from the same "income source".

Taxes on disposals of assets

Sale of shares or other assets may result in taxable gains (taxable at either the basic 19% rate or a preferential 15% rate, and viewed as ordinary income). Such a sale may also trigger transfer tax (payable by the buyer). Under specific conditions, tax neutral reorganisations such as mergers, may be possible providing they have a valid business justification.

Tax status in insolvency

The Polish Corporate Income Tax Act does not in general foresee special tax rules for insolvent entities (however there are specific provisions concerning, e.g. excluding forgiven debt from taxable revenue).

Secondary liabilities

If a given entity is unable to satisfy its tax liabilities, in certain cases, a so-called "third party liability" may be imposed e.g. on its management board members, provided specific conditions are met.

Withholding taxes

Interest paid to non-Polish resident lenders is subject to withholding tax at 20%, unless an exemption / reduced rate is available under an applicable double taxation treaty, or an exemption based on domestic provisions implementing the EU Interest-Royalties Directive applies. The notion of "payment" includes the capitalisation of interest.

Country specific considerations

All restructuring transactions have to be analysed from the standpoint of the general anti-avoidance rule (GAAR), and, if applicable, the VAT "abuse of law" rule - both of which became effective as from 15 July 2016.

Restructuring tax – Portugal

Our Portuguese Restructuring Tax Team

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.

Margardia Ramos Pereira
Tax Partner
+351 210427593
margpereira@deloitte.pt

Luís Miguel Belo
Tax Partner
+351 210427611
lbelo@deloitte.pt

Debt Forgiveness/amendment

Under Portuguese tax legislation, the release of debt creates a taxable income (or a positive net equity variation) in the borrower company. This income may be excluded from taxation if the debt forgiveness is given under a special bankruptcy and companies' recovery regime.

A credit forgiveness gives rise to a non-deductible cost unless a specific regime is applicable (e.g. the bankruptcy of the debtor).

Interest deductibility

From 1 January 2017, net financial expenses (i.e. interest expenses less interest income) are broadly deductible up to the higher of €1m or 30% of the tax-adjusted EBITDA.

Tax attributes

There are restrictions with respect to how long tax losses can be carried forward for, depending on when they arose. The utilisation of tax losses is limited to 70% of the taxable profit of the year.

Changes in direct ownership or control (more than 50%) prevent the carry forward of tax losses, unless a special authorisation granted by the Portuguese Minister of Finance. The approval of such request is not automatic and is subject to a case-by-case analysis.

Taxes on disposals of assets

The Transfer of a Business as a Going Concern (as well as the sale of assets) of Portuguese companies may result in taxable gains or tax losses. Gains on assets held for at least one year may be reduced under a rollover relief mechanism such that only 50% is immediately taxable. Mergers and demergers can often be carried out on a tax neutral basis.

A transfer of a business as a going concern may attract stamp tax at a 5% rate.

Capital gains derived from the disposal of shares may be exempt from tax under the participation exemption regime (several conditions must be met).

Tax status in insolvency

Insolvency processes bring challenges due to their impact on tax groupings and the fact that certain forms of income and losses are taxed differently under separate rules.

Secondary liabilities

As a general rule, the Administrators, the Official Chapter of Account/Official Auditors and/or the Official Accountants of Portuguese companies may be responsible for tax debts if proved that the outstanding liability exist as a result of their omission of professional duties.

Under a transfer of a business as a going concern, the acquirer company will be jointly responsible for any social security outstanding liability existing by the date the transaction occurs, regarding the employees transferred.

Withholding taxes

As a general rule, withholding tax is due on income paid or due to non-resident entities at a 25% rate. This rate may be reduced under a double taxation treaty, EU directive or a domestic exemption.

Restructuring tax – Romania

Our Romanian Restructuring Tax Team

The RS tax team in Romania has significant experience in both domestic and multinational insolvency and restructuring transactions.

Romania has complex tax provisions governing restructurings, which often have complex legal implications as well, so the importance of advice cannot be understated.

Daniel Petre
Tax Director
+40 730 585 836
dpetre@deloittece.com

Silviu Sandache
Tax Director
+40 727 732 285
ssandache@deloittece.com

Debt Forgiveness/amendment

Debt forgiveness generally gives rise to taxable income at the level of the borrower and, subject to certain conditions, a deductible expense for the lender.

If a loan agreement is novated to another party, there may be tax implications depending upon the lender's country of residence. Additionally, VAT implications might also arise depending on each specific situation.

Another option is a debt-to-equity swap, which is usually a non-taxable event. However, depending upon each situation, tax and legal implications might arise in this case as well.

Interest deductibility

In general, expenses are deductible if they are incurred for business purposes or they arise on loans from banks or non-banking financial institutions.

Specific deductibility rules are provided in relation to interest expenses and foreign exchange losses related to loans obtained from entities other than the ones mentioned above that should be carefully considered.

Additionally, the initial purpose of the loan should be specifically analysed (e.g., debt-push-down, share capital injection) from a tax deductibility perspective.

Tax attributes

Tax losses or non-deductible interest expenses carried forward may be transferred as part of a merger, spin-off process (proportionally with the assets transferred), or through a tax neutral transfer of business.

Taxes on disposals of assets

Gains arising from the sale of assets are generally taxable (16% tax rate applies). Certain gains may be exempt through e.g. the participation exemption.

Transfer fees (i.e., land registry and notary fees) should also apply where immovable assets are transferred or disposed of.

Tax status in insolvency

Please note that no special tax regime applies to companies in insolvency.

However, inactive taxpayers that carry out economic activities, during such period, are subject to taxes and social contributions, but do not benefit the right to deduct expenses and VAT costs related to acquisitions made during that period.

Secondary liabilities

Criminal investigations directed towards the company may also lead to the investigation of the persons authorising the transactions on behalf of the Romanian company. There are no other provisions in Romania with respect to Secondary Liabilities.

Withholding taxes

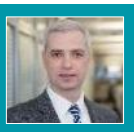
Interest, royalties and dividends paid to non-residents are generally subject to withholding tax at 16%. However, the WHT rate may be reduced or even eliminated based under a relevant Double Taxation Treaty.

Restructuring tax – Russia

Our Russian Restructuring Tax Team

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

Grigroy Pavlotsky
Tax Partner
+74957870600
gpavlotsky@deloitte.ru



Dmitry Pozharniy
Tax Senior Manager
+74957870600
dpozharniy@deloitte.ru

Debt Forgiveness/amendment

The release of excess debt can create taxable income in a borrower company. However, there are some mechanisms in the tax legislation which allow to reduce this taxable income, if structured properly.

Interest deductibility

Related party loans are subject to transfer pricing and thin capitalisation rules. In order to mitigate the thin capitalisation issues and/or withholding tax risks, complex debt restructuring may be required.

Interest deductibility restrictions do not apply to loans from third parties.

Tax attributes

Accumulated tax losses can be a significant source of value for companies that are struggling. For the calendar years 2017 to 2020, the utilisation of tax losses is limited to 50% of taxable profits generated for a respective calendar year.

Taxes on disposals of assets

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

A common issue with disposals is the requirement of a seller to receive additional compensation for the goodwill of a business. However, current Russian legislation does not provide for the possibility of a direct sale of goodwill, and careful consideration is usually required to address this issue.

Tax status in insolvency

Some special rules apply during insolvency procedures, including different VAT treatment of sales of assets. Care should therefore be exercised to avoid unexpected tax liabilities.

Secondary liabilities

The inability of a seller to meet its own tax liabilities may, in certain cases, result in those liabilities being passed to the owners or, in some specific cases, to other companies of the group. This may equally affect a new owner following an acquisition.

Withholding taxes

Interest paid to non-residents is subject to withholding tax at 20% unless an exemption or a reduced rate is available under a double taxation treaty. “Payment” includes settlement in kind, for example through a debt-for-equity swap.

Restructuring tax – Slovakia

Our Slovakian Restructuring Tax Team

The Restructuring team in Slovakia is an embedded, experienced team. It has significant background in advising multinational groups across a number of jurisdictions, advising on both tax and legal matters.

Miroslava Grestiakova Terem
Tax – Legal Director
+421 2 582 49 341
mgrestiakova@deloittece.com

Hana Hlavackova
Tax Manager
+421 2 582 49 231
hhlavackova@deloittece.com

Debt Forgiveness/amendment

The waiver of debt, whether in full or in part, creates taxable income in a borrower company. Such income would be tax exempt when the waiver is made when in restructuring or insolvency proceedings.

The release of a debt for the lender would generally not be tax deductible; however in some specific cases, tax deductibility may be achieved upon meeting certain conditions.

Interest deductibility

Under Slovakian thin capitalisation rules, interest is deductible up to 25% of a metric very similar to EBITDA. Interest deductibility is not limited for certain entities including banks, insurance and leasing companies.

Tax attributes

Tax losses brought forward are generally lost when entering into restructuring or insolvency proceedings. The right to claim tax relief received under various state subsidy schemes may also be impacted.

Taxes on disposals of assets

Capital gains arising on the sale of assets that are part of the insolvency proceedings are not taxed. Capital gains arising on the disposal of assets are otherwise generally taxable.

Tax status in insolvency

There are no further changes to the tax status of a company in solvency other than what has been described above.

Secondary liabilities

The inability of a seller to meet its own tax liabilities should not result in those liabilities being passed to other companies in a group.

Withholding taxes

Interest and dividends paid to non-residents is subject to withholding tax of 21%, unless an exemption or a reduced rate is available under a double taxation treaty.

Country specific considerations

For Slovakian tax purposes, if a company is considered a "company in crisis" (i.e. its debt to equity ratio exceeds certain threshold) intercompany debt may be considered equity and therefore claiming interest deductions in a restructuring or insolvency proceeding may be impeded.

Restructuring tax – South Africa

South Africa Restructuring Market Overview

The Southern African restructuring market has been quiet in 2017 largely due to the outcome of the ANC National leadership Conference, the possibility of a further credit rating down grade and a volatile exchange rate.

We do, however, expect an increase in activity moving into 2018, driven by a weakening macro-economic environment, challenged sectors and a fall out of highly leveraged deals.

Daniel Terblanche
Restructuring Director
+27113045847
danterblanche@deloitte.co.za

Our South African Restructuring Tax Team

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 close 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.

Louise Vosloo
Tax Director
+27118065360
lvosloo@deloitte.co.za

Carolina Meyer
Tax Manager
+27118065591
caromeyer@deloitte.co.za

Debt Forgiveness/amendment

Where a debt is reduced, whether by way of waiver, forgiveness, compromise, or otherwise, there could be adverse tax consequences for the borrower.

Interest deductibility

South African tax legislation requires that transactions be at arm's length. In addition, there are provisions that restrict the deductibility of interest on the acquisition and reorganisation of debt.

Provisions also exist to regulate the deductibility of interest in respect of a debt owed to a person that is not subject to tax in South Africa.

Tax attributes

Tax losses created by a resident company are generally ring-fenced in that company and cannot be utilised/set-off by another company in a tax group. Additional anti avoidance provisions mean that careful consideration is therefore required to ensure that losses are not lost as a result of a restructuring.

Taxes on disposals of assets

The sale of shares or other assets may result in taxable capital gains or capital losses, generally at an effective tax rate of 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 rollover relief provisions for group companies.

Tax status in insolvency

When an entity enters insolvency, tax consequences may arise where assets and liabilities are transferred to a parent company for both the liquidating company and the parent company. There are also corporate rollover relief provisions that may apply to the liquidation transaction in a group of companies.

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 classified as a creditor and can put in a claim against the insolvent company for any outstanding taxes.

Secondary liabilities

South Africa does not allow for taxation on a group or consolidated basis; each company in a group of companies is a taxpayer in its own right and each company must file a separate return. Tax losses incurred by group companies cannot be set off against the taxable income of other companies in the group. There are no other specific secondary liability provisions.

Withholding taxes

Dividends paid to individuals, trusts and foreign persons are generally subject to a 20% withholding tax, subject to the provisions of an applicable tax treaty.

Interest and royalties are generally subject to withholding tax at 15%.

The sale of immovable property in South Africa by a non-resident seller may result in withholding taxes, depending on the legal form of the seller.

Restructuring tax – Spain

Spain Restructuring Market Overview

The Spanish restructuring market has been changing significantly in the last few years due to improvements in the macro economic environment and regulatory changes (both in the insolvency laws and on accounting rules of the banking system).

The construction and engineering sectors are still facing problems. We also expect Retail and Business Services to face challenges in the near future.

The Banking system is still under pressure, which is creating opportunities for Hedge and other Investment funds.

Senen Touza
Restructuring Partner
+34 914432539
stouza@deloitte.es

Our Spanish Restructuring Tax Team

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.

Jose M Gomez
Tax Partner
+34 914381081
josemgomez@deloitte.es

Pablo Esteban
Tax Manager
+34 914381099
pesteban@deloitte.es

Debt Forgiveness/amendment

If there is a novation or modification of debt and the new terms are significantly different, there can be 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.

Waivers and capitalisations of debt often result in an accounting credit which may trigger taxable income, depending on a number of factors. If taxable income accrues, the current restrictions on tax loss usage may result in a cash tax cost. This should therefore be carefully managed.

Interest deductibility

Net interest expense is broadly limited to 30% of tax adjusted operating profits (a tax measure of profits similar to EBITDA) on any expense amounts over €1m.

Tax attributes

The rate that tax losses can be utilised depends on the turnover of that company. The rate generally ranges between 25% and 70% of taxable profits arising in a given financial year.

Taxes on disposals of assets

The sale of shares or other assets may result in direct and indirect taxes when real estate or "property rich companies" are involved.

Tax status in insolvency

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

Secondary liabilities

Entities that succeed in the ownership or exercise of a business activity will be considered as joint and severally responsible for the tax liabilities incurred by the former owner. Additionally, all the companies within a tax group are joint and severally liable for the corporation tax liability of the Group.

Withholding taxes

As a general rule, dividend and interest payments to EU shareholders/lenders are exempt from withholding tax in Spain under the application of the EU Parent-Subsidiary Directive and other domestic exemptions. However, the Spanish Tax Authorities have taken a very strict position in terms of substance and business rationale to qualify for those exemptions.

Country specific considerations

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.

Restructuring tax – Sweden

Sweden Restructuring Market Overview

The Nordic restructuring market is currently dominated by the offshore and shipping sectors. While the general economy is strong across the region, the offshore and shipping sectors are severely hit by the extended downturn in the Oil & Gas market.

As the low market demand continues, and more assets comes off long term contracts at above-market rates, the pressure is increasing for more fundamental restructuring solutions.

Andreas Enger
Restructuring Partner
+47 23 27 95 34
aenger@DELOITTE.no

Our Swedish Restructuring Tax Team

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

Lars Franck
Tax Partner
+46 73 397 21 26
lfranck@deloitte.se

Jonas Mauritzson
Tax Manager
+46 70 080 20 95
jmauritzson@deloitte.se

Debt Forgiveness/amendment

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.

Interest deductibility

Sweden has certain restrictions that apply to all interest costs on loans granted by affiliated companies, regardless of the purpose or origin of the loan.

There are proposed changes to limit internal and external debt based on a certain percentage of an adjusted EBIT or EBITDA. These new rules would likely be applicable for financial years beginning after 30 June 2018.

Tax attributes

Certain restrictions apply to tax losses carried forward following a change of ownership. Losses carried forward exceeding 200% of the purchase price for the shares in the acquired company, reduced by any capital contributions, are forfeited. There are potential exemptions to these rules.

Taxes on disposals of assets

Sweden operates a participation exemption regime under which capital gains on shares can be tax exempt, whereas a sale of other assets may result in a taxable gain or loss. Depending on the tax position of the selling and acquiring companies, an asset sale, may, in some situations, be more favourable than a share transaction.

Tax status in insolvency

Insolvency processes could bring challenges due to their impact on certain transactions and the fact that certain forms of income and costs are taxed differently under separate rules. Certain transactions may also be reclassified under certain circumstances according to case law.

Secondary liabilities

In specific circumstances, the inability of a seller to meet its own tax liabilities may result in those liabilities being passed to the directors or officers of a company personally.

Withholding taxes

Sweden generally levies withholding tax of 30% on dividend distributions. However, there are several exemptions that may apply, either under domestic legislation or under applicable tax treaty.

Sweden does not levy withholding taxes on interest.

Country specific considerations

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.

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

Restructuring tax – Switzerland

Our Swiss Restructuring Tax Team

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.

Flurin Poltera
Tax Partner
+41 58 279 7217
fpoltera@deloitte.ch

Jacques Kistler
Tax Partner
+41 58 279 8164
jkistler@deloitte.ch

Debt Forgiveness/amendment

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.

Interest deductibility

Interest expenses are tax deductible provided certain requirements are met. Interest deductions can be denied and withholding taxes, at rates of up to 35%, applied where non-arm's length interest is paid.

No new unilateral provisions are currently foreseen to align the current law and practice due to BEPS action 4.

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 case of a financial restructuring, there are complex rules that dictate whether tax losses carried forward are lost.

Taxes on disposals of assets

A sale of shares will normally be tax exempt due to the Swiss participation exemption regime, whereas a sale of other assets may result in taxable gains or losses. Depending on the tax position of the vendor and the acquirer, an asset sale may, however, in some situations be more favourable than a share transaction.

Tax status in insolvency

Switzerland does not generally recognise the concept of tax grouping, with the exception of VAT. Therefore VAT consequences have to be closely examined for companies in insolvency.

Secondary liabilities

Under certain conditions, legal persons other than the taxpayer (in particular board members) may be held liable for taxes owed by the taxpayer.

Withholding taxes

Switzerland generally levies withholding tax of 35% on dividends and 0% on interest. The withholding tax rate for dividends may be reduced through a domestic exemption or a double taxation treaty.

More specifically, 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.

Restructuring tax – Turkey

Our Turkish Restructuring Tax Team

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

Güler Hülya Yılmaz
Tax Partner
+90 533 275 70 03
hyilmaz@deloitte.com

Arzu Değer Akçura
Tax Director
+90 533 297 14 91
adeger@deloitte.com

Debt Forgiveness/amendment

Debts that have been waived by composition or compromise, may, subject to certain conditions, be taxable for the borrower.

Stamp taxes may apply on novation or amendment of a loan agreement.

Interest deductibility

Debt push-down and subsequent interest deductibility is often difficult to achieve in Turkey and is not recommended when restructuring.

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 may be treated as non-deductible and subject to withholding tax.

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 carried forward tax losses and carry forward input VAT, with certain limitations and subject to anti-avoidance rules.

Taxes on disposals of assets

Subject to certain conditions, both individual and corporate shareholders may be able to benefit from tax exemptions from gains arising on share disposals.

Mergers conducted between corporations resident in Turkey may qualify as tax-free transactions in certain circumstances. Certain demergers can be executed, under certain conditions, as part of a restructuring transaction, on a tax neutral basis.

Tax status in insolvency

Turkey has complex provisions governing the calculation of taxable profits in liquidation and the filing of tax returns for its duration.

Secondary liabilities

Other than the ability to assign VAT refund receivables to another party, there are no other provisions in Turkish law with respect to secondary liabilities.

Withholding taxes

Dividends paid by a Turkish company to non-resident shareholders are subject to withholding tax at 15%. Interest payments made to non-residents does not generally suffer withholding tax.

Certain other payments, such as royalty payments, are subject to withholding tax at 20%.

Country specific considerations

Loans denominated in foreign currency from abroad by persons resident in Turkey are subject to supplementary charges, the rate of which depends on their maturity date.

Restructuring tax – UAE

UAE Restructuring Market Overview

The UAE has continued to pursue its diversification agenda in light of the revision in oil prices and perceived "new normal". Liquidity levels are starting to return although the banking sector remains cautious in their selection of suitable borrowers opting for lower risk, secured options.

Restructuring activity around the newly introduced, mainland insolvency regime, is yet to materialise, but remains an area of keen interest. Equally the introduction of VAT in January 2018 is likely to impact the cash cycle of most businesses which may exacerbate any underlying underperformance concerns.

David Stark
Restructuring Director
+971 4 5064739
dastark@deloitte.com

Our UAE Restructuring Tax Team

Deloitte's International Tax Services Centre for Excellence in Dubai has a wide array of experience dealing with the restructurings of leading multinational groups, 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 the expertise of local Deloitte teams for on the ground support.

Alex Law
Tax Partner
+9714 5064700
alexlaw@deloitte.com

Vishal Sharma
Tax Senior Manager
+971 4 5064902
vishalsharma@deloitte.com

Debt Forgiveness/amendment

Debt forgiveness and corporate disposals can generally be undertaken in a tax free manner as only oil and gas exploration and production businesses and branches of foreign banks are, in practice, subject to corporate taxation.

Interest deductibility

Currently not relevant due to the predominant absence of corporate taxation in the UAE.

Tax attributes

Currently not relevant due to the predominant absence of corporate taxation in the UAE.

Taxes on disposals of assets

Generally, no taxation arises on the disposal of assets.
A transfer of real estate may result in transfer fees being levied in certain Emirates of the UAE (see below under other taxes).

Tax status in insolvency

The concept of corporate insolvency is not developed in the UAE. In any case, it is not currently relevant, due to the predominant absence of corporate taxation in the UAE.

Secondary liabilities

As the concept of corporate bankruptcy is not developed in the UAE, corporate default on monetary liabilities can expose the directors/general managers of businesses established in the UAE to a claim in local courts.

Withholding taxes

There is currently no withholding tax regime in the UAE.

Country specific considerations

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 Emirate in which the property is situated.
The UAE is planning to introduce VAT from 1 January 2018. The standard rate of VAT will be 5% and there will be a 0% and VAT exemption applicable to certain supplies in the UAE.

Restructuring tax – Ukraine

Our Ukrainan Restructuring Tax Team

The Ukrainian RS Tax team has vast experience and profound knowledge in providing expertise on restructuring matters and different insolvency scenarios. By aiming to deliver excellent service, tailored to meet each client's requirements, we have built long-standing relations with the clients from a variety of industries.

Andriy Servetnyk
Tax Partner
+380444909000
aservetnyk@deloitte.ua

Debt Forgiveness/amendment

Where a transaction is documented as debt forgiveness, this will generally lead to a taxable credit in the borrower company and a non-deductible expense in the lender company.

In certain circumstances, debt forgiveness may be treated as a capital transaction (i.e. it should not lead to taxable income). However, this approach may be challenged by the tax authorities.

Interest deductibility

Thin capitalisation rules apply to taxpayers whose debts to non-resident related parties exceed 3.5 times the taxpayer's equity. In this case, interest deductions are limited to 50% of EBITDA. Any portion of the interest expense that remains not deducted may be carried forward, with a 5% annual reduction of the residual amount.

Tax attributes

From 1 July 2012, taxpayers whose taxable income in 2011 exceeded UAH 1 million were allowed to deduct only 25% of losses accumulated on 1 January 2012 in the period of 2012-2015. If the losses were not utilised by the end of 2015, they may be carried forward for future tax periods.

Losses may not be carried back.

Tax authorities may challenge the ability to carry forward losses following a reorganisation.

Taxes on disposals of assets

Capital gains realised on the disposal of assets are generally taxable at the general rate of 18%. These transaction are also generally subject to Ukrainian VAT.

Non-residents are subject to 15% withholding tax on capital gains.

Tax status in insolvency

Ukrainian companies are under obligation to pay their taxes until there is a court decision to start insolvency proceedings. The insolvency procedure does not generally have any specific tax implications for the owner of the business, nor for the creditors.

Secondary liabilities

Where a branch of a legal entity does not have sufficient assets to satisfy a tax liability payment, the tax authorities have the ability to enforce the debt on the legal entity and obtain control of their assets to satisfy the debt.

Withholding taxes

Dividends, interest and royalties paid to non-resident companies are subject to a 15% withholding tax, unless a lower rate applies under a tax treaty.

Country specific considerations

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.

Restructuring tax – United Kingdom

UK Restructuring Market Overview

The UK restructuring market has been relatively benign in 2017 with debt markets burning hot and equity markets remaining confident. We expect an increase in activity moving into 2018 driven by a weakening macro-economic environment, challenged sectors and a fall out of highly leveraged deals in recent years.

Interest rate rises and political/Brexit uncertainties across Europe and the UK all point to increases in restructuring activity in 2018.

Andrew Grimstone
Restructuring Partner
+44 20 7007 2998
agrimstone@deloitte.co.uk

Our UK Restructuring Tax Team

The UK has particularly complex taxation provisions around debt instruments, as well as restructuring and insolvency transactions more generally. The UK RS Tax team has a wealth of experience in this area, having advised lenders, borrowers and investors across all industries and geographies, considering a wide variety of scenarios.

Marcus Rea
Tax Partner
+44 20 7303 0250
marcusrea@deloitte.co.uk

Chris Hadfield
Tax Partner
+44 20 7007 8153
chadfield@deloitte.co.uk

Debt Forgiveness/amendment

Under UK legislation, the release of debt can create taxable income in a borrower company. Taxable income may also arise where a borrower and lender are or become connected if the debt stands at a discount (even where the debt is not actually released).

Exemptions exist to mitigate the impact of taxable income arising in struggling companies. However, the conditions for each exemption can be complicated.

Interest deductibility

From 1 April 2017, tax deductible interest will broadly be restricted to 30% of an entity's tax EBITDA (subject to a £2m de minimis). There may, however, be scope to increase the quantum of UK tax deductible interest in respect of third party debt, and where the wider global group is highly leveraged.

Tax attributes

Accumulated tax losses can often be a significant source of value for struggling companies. New rules introduced from 1 April 2017 mean only 50% of taxable profits (25% for banking groups) over £5m (per group) can be sheltered. This restriction is in addition to historic anti-avoidance legislation aimed at preventing the use of losses following a major change in the nature or conduct of an entity's trade or circumstances. Nevertheless, appropriate structuring can enhance deal values and bridge pricing gaps.

Taxes on disposals of assets

The sale of shares or other assets may result in taxable gains. Certain exemptions are available to reduce or exempt gains arising on assets; the substantial shareholding exemption may apply to gains arising on the sale of shares and the conditions for this exemption have been relaxed slightly.

Tax status in insolvency

Insolvency processes bring challenges due to their impact on tax groupings and the fact that certain forms of income are taxed differently under separate rules. Pre-appointment tax liabilities rank as unsecured creditors, but insolvency practitioners should take care as any tax liabilities that arise in the process are normally required to be settled as an expense of the administrator or liquidator.

Secondary liabilities

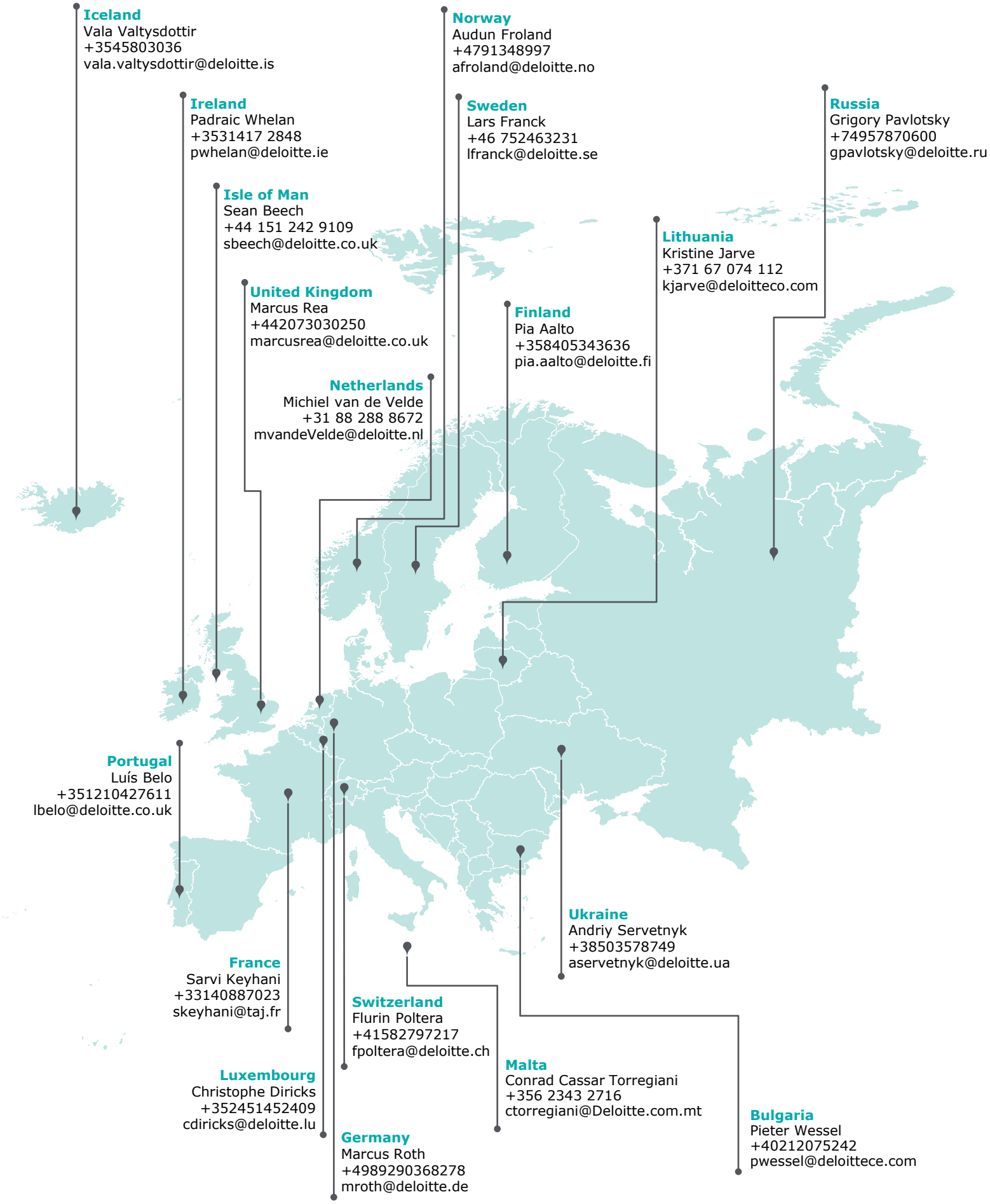
The inability of a seller to meet its own tax liabilities may result in those liabilities being passed to other companies in a group (including, for instance, those companies that may be acquired by a new owner) or, in specific circumstances, to the directors or officers of a company personally.

Withholding taxes

Interest paid to non-UK resident lenders is subject to withholding tax at 20% unless an exemption or a reduced rate is available under an applicable double taxation treaty. "Payment" includes settlement in kind, for example through a debt-for-equity swap.

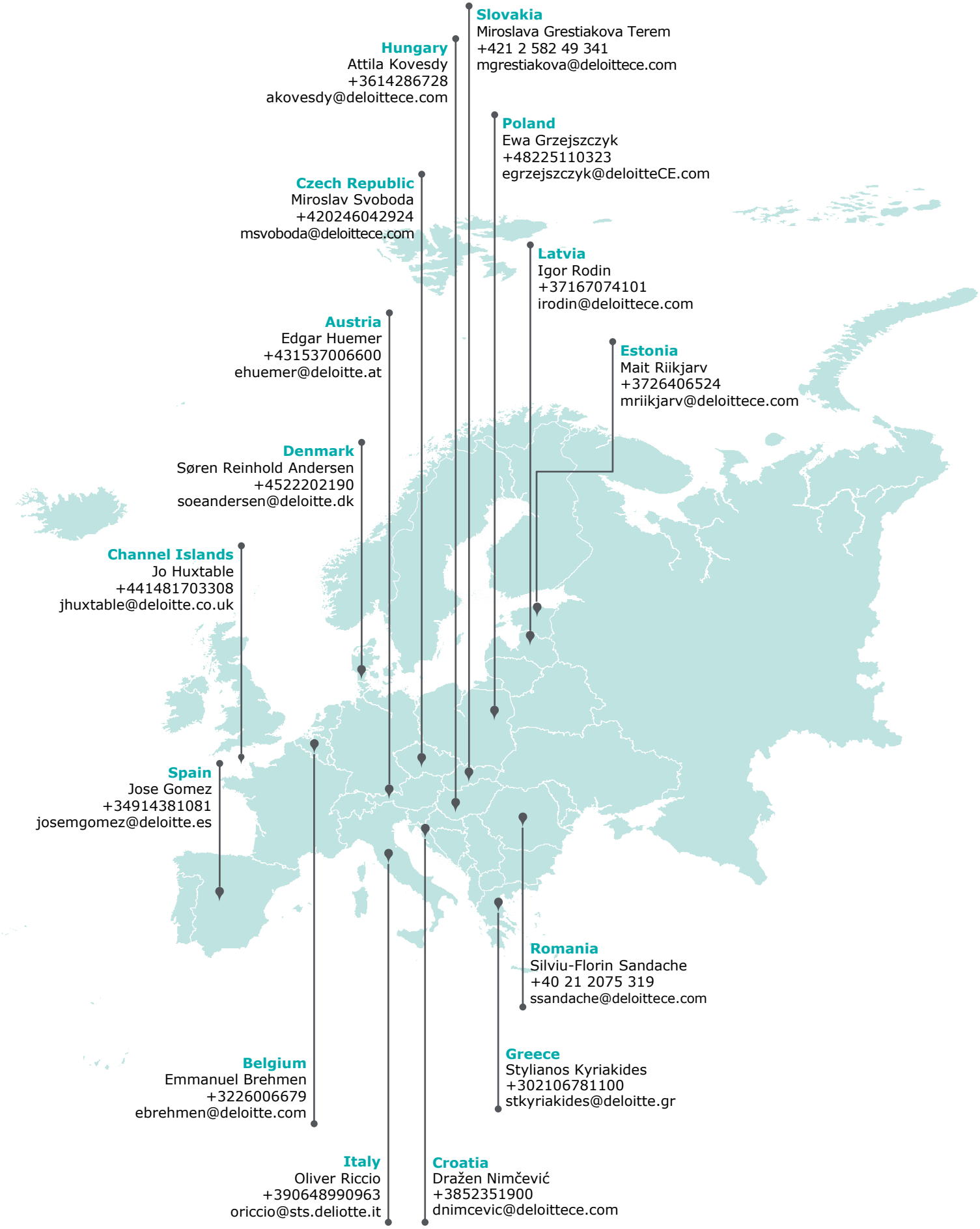
Key Contacts

Europe



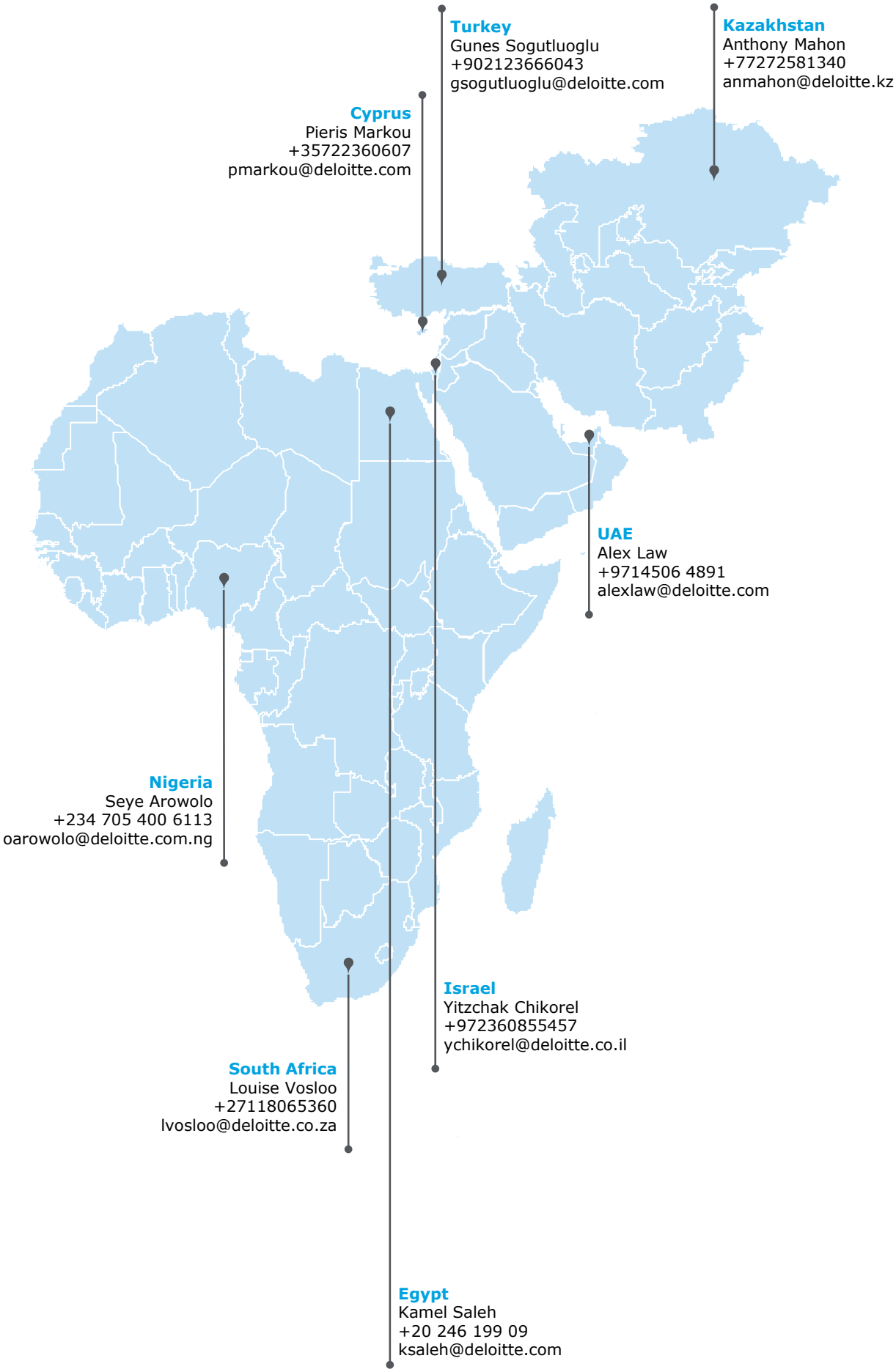
Key Contacts

Europe



Key Contacts

Middle East and Africa



Deloitte.

Designed and produced by The Creative Studio at Deloitte, London. J14203