



Tax and Legal Restructuring Services

KPMG International

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Content

In the wake of COVID-19, most organizations will face ongoing challenges in terms of managing cash and liquidity, stabilizing the business to weather lingering economic uncertainty, and planning for long-term revival of the business.

Organizations facing performance issues often find it difficult to differentiate the symptoms from the cause, and this will be exacerbated by the unknown of the post-COVID environment. For many organizations, reestablishing an optimal capital structure will require new restructuring solutions.

Together, KPMG Global Legal Services and Deal Advisory, M&A Tax professionals provide integrated restructuring services to companies, creditors, investors and other stakeholders to preserve and help optimize value for those who are experiencing operational and liquidity challenges across all sectors and market segments.

Our services include a prompt and strategic assessment of your situation, followed by the development of tailor-made solutions and relevant recommendations as to your tax and legal considerations and approach in line with long-term business goals.

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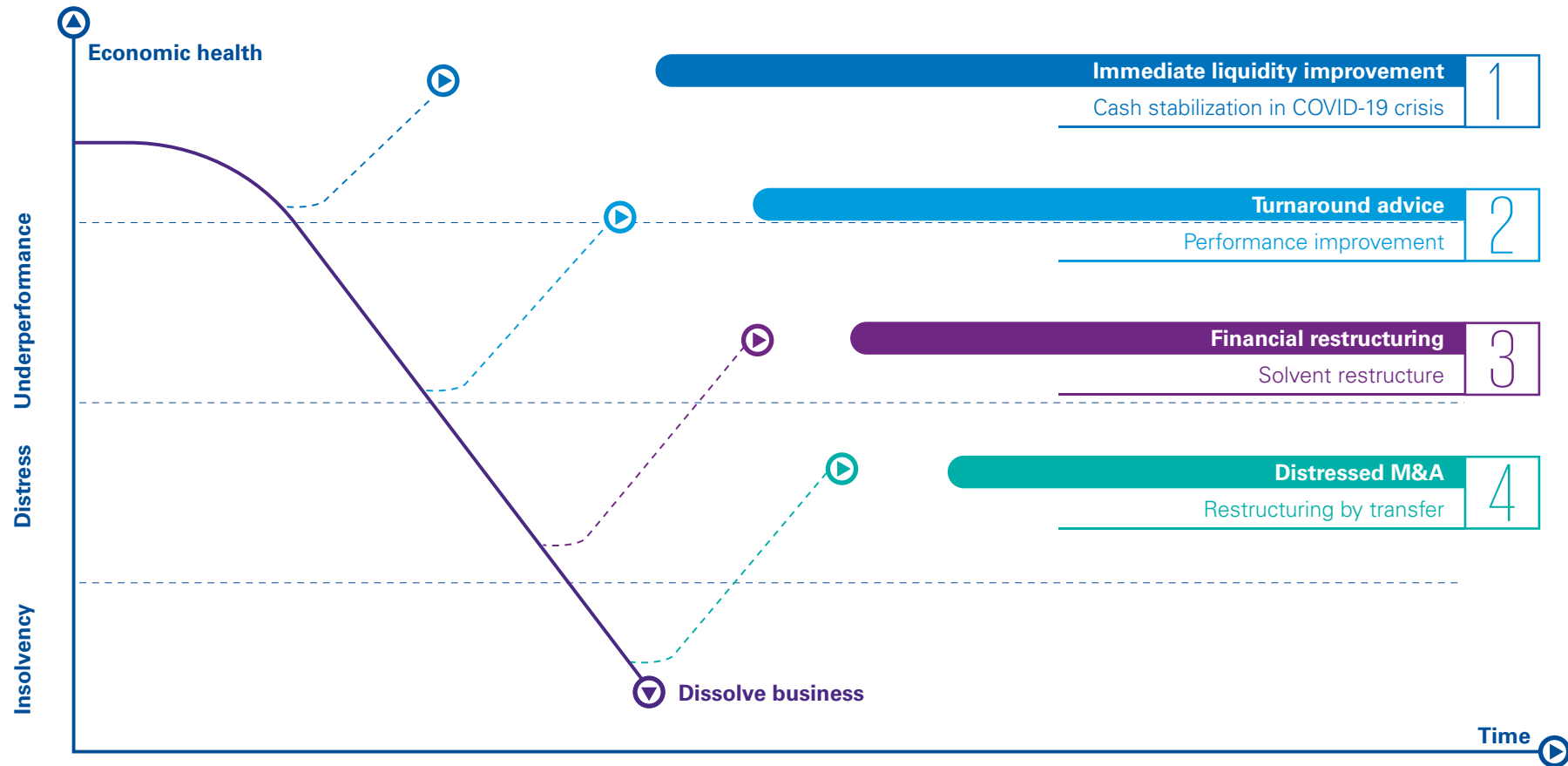
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A typical restructuring cycle






Stakeholder considerations

Restructuring is a broader engagement, focusing primarily on the strategic, financial and operational management of a struggling, but viable, business with the objective of returning it to profitability. Every stakeholder's tax and legal considerations are required to be considered while planning restructuring.


▶ Company

- Accelerate tax refunds, defer payments.
- Unlock trapped cash.
- Restructure, cancel, swap debt tax neutrally.
- Preserve tax attributes (e.g. tax losses in operative/corporate reorganization).
- Maintain interest deductions.
- Increase general tax efficiency.
- Ensure compliance with directors duties.
- Understand contractual rights and obligations and minimize risks.
- Understand employee obligations.
- Minimize litigation risk.




Shareholder

- Utilize losses in case of a sale/squeeze out.
- Preserve a high tax base in company reorganization.
- Minimize de-grouping charges/claw backs.
- Minimize liability risk in a sale/purchase.




▶ Current lenders

- Utilize losses on loan when default, sale or swap occurs.
- Minimize taxes on value increase after debt to equity swap.
- Understand contractual rights and obligations.



New lenders

- Minimize taxes on a value increase after loan acquisition.
- Minimize taxes on debt to equity swap of a loan acquired below nominal value.
- Minimize withholding taxes on future interest income.
- Understand contractual rights and obligations.






Key considerations under restructuring

Tax considerations while planning a restructuring include:

▶ Interest deductibility

- Optimizing tax deductibility of interest expenses in light of limitations on such deductions introduced in response to base erosion and profit shifting (BEPS).



▶ Debt forgiveness/amendment

- Analyzing the relevant exemptions that may be available across a number of jurisdictions.
- Taxable credits can arise where debt is forgiven or amended.



▶ Tax attributes

- Tax attributes such as losses and accumulated tax depreciation may be lost or restricted on a change of ownership.
- Analyzing the restricting use of broughtforward losses.



▶ Country/jurisdiction specific considerations

- Due to the changes in tax legislation across countries/ jurisdictions, local advice should always be sought to ensure the key provisions relevant to each location are analyzed and managed appropriately.



▶ Taxes on disposals of assets

- Determination of capital gains taxes, income taxes and transfer taxes arising when assets are disposed of or transferred.
- Determining the unexpected or unnecessary tax liabilities arising out of restructuring.



▶ Withholding taxes

- Cash repatriation across various countries/jurisdictions, require withholding taxes to be considered subject to treaty analysis.
- Withholding taxes may also be due on deemed payments.



▶ Secondary liabilities

- Understanding the secondary liabilities when acquiring distressed companies.
- Evaluating outstanding debts against associated parties.



▶ Tax status in insolvency

- Income received by companies in insolvency is often taxed differently and relief for expenses may be limited.
- Under insolvency, it can trigger tax charges.





Key considerations under restructuring

Legal considerations while planning a restructuring include:

▶ Existing contractual rights and obligations

- Understand termination rights of both parties.
- Understand indemnity and liability provisions.
- Understand any assignment restrictions.



▶ Employee considerations

- Understand rights of, and obligations owed to, employees in connection with the restructuring.



▶ Documentation

- Identify all legal documentation required to properly implement the restructure.



▶ Regulatory considerations

- Directors duties that must be satisfied.
- Regulatory approvals required in relation to any restructuring.
- Understand laws both locally and internationally that impact the restructuring including insolvency laws.



▶ Due diligence

- Determine any due diligence required to support the restructure.





Our service offerings



1 ▶ Liquidity management



- Help maximize tax refund, tax deferral and tax holiday opportunities.
- Allow for tax efficient transfer of cash within the group.
- Help maximize loss carry-back (e.g. by provisioning).
- Reclaim value-added tax (VAT) on bad debts.
- Sale and lease back transactions.

2 ▶ Operational restructuring/tumaround advisory



- Adjust transfer pricing to the modified business model.
- Debt capacity analysis following operational reorganization.
- Utilization of tax losses and tax attributes.
- Secure availability of tax and customs permits and licenses required for continuation of business.
- Employee tax consequences of workforce reorganization.



3 ▶ Financial restructuring



- Utilization of loss on cancellation of debt at the creditor level and minimize taxation on release of debt at the debtor level.
- Tax consequences of conversion of debt into equity.
- Secure deductibility of interest on remaining debt.
- Tax treatment of increase in value of equity or debt instrument following distress situation.
- Help avoid adverse tax consequences of (required) legal reorganizations.

4 ▶ Pre- and post-insolvency advisory



- Quantifying the corporation potential tax attributes and identifying and planning for the potential tax consequences arising in debt modifications/debt cancellations.
- Determining the potential limitations on the deductibility of expenses incurred in the insolvency/bankruptcy proceeding.
- Determining potential tax consequences of the reorganization plan.
- Quantifying and planning for the potential tax impacts of asset sales and determining the tax cost of asset sales.
- Evaluating and analyzing the potential tax effects of intercompany transactions and intercompany reorganizations.





Our service offerings

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Legal advisory

Advising on legal considerations relevant to implementing a restructuring including:

- directors duties
- contractual obligations and counterparty risk
- employee obligations
- regulatory approvals
- due diligence to support the restructure; and
- optimum legal structure for the restructure and identification of any associated risks.



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Legal documentation

Drafting and advising on legal documentation required to implement a restructure, including:

- sale documentation and ancillary documents
- directors and shareholders minutes
- third party consent documents
- regulatory approval applications; and
- employee related documentation.





How KPMG can help

KPMG Restructuring capabilities bring together professionals from Global Legal Services and Deal Advisory, M&A Tax to help companies avoid fiscal pitfalls and unpleasant, post-transaction surprises.

In addition to identifying potential tax costs and risks and legal considerations of restructuring, and proposing related actions and methodologies to help minimize risks and negative effects on deal value, we help identify potential saving opportunities to enhance the deal value and propose approaches to capture those opportunities. Our teams are commercially minded, experienced professionals who help clients identify and manage material tax exposures and legal considerations, and look beyond the immediate impact to design deal structures that help enhance returns for the long term.

Potential benefits



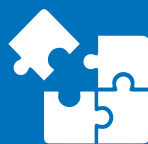
Global reach

- Internationally-connected teams ready on short notice.
- Close collaboration between you, your local contacts and colleagues around the world.
- Customized approaches developed with a global lens in mind.



Broad expertise

- Detailed knowledge in all restructuring phases including legal risks.
- Experience in dealing with the various stakeholders in restructurings.
- Strong track record of restructuring and M&A tax and legal.



Integrated approach

- Ongoing interaction between you, your advisors and our professionals across tax, restructuring and legal services.



Global contacts

Arco Verhulst

Global Head of Deal Advisory, M&A Tax
KPMG International Services Limited

T: +31 8890 92564

E: verhulst.arco@kpmg.com

Stuart Fuller

Global Head of Legal Services
KPMG International Services Limited

T: +61 2 9458 1590

E: stuartfuller@kpmg.com.au

Australia:

Hannah Hesse

Partner (Tax)

T: +61 2 9335 8059

E: hhesse1@kpmg.com.au

Stuart Fuller

Partner (Legal)

T: +61 2 9458 1590

E: stuartfuller@kpmg.com.au

David Morris

Partner (Legal)

T: +61 2 9455 9999

E: davidmorris@kpmg.com.au

Austria:

Eugen Strimitzer

Partner (Tax)

T: +43 1 31 332 4250

E: estrimitzer@kpmg.com

Wendelin Ettmayer

Partner (Legal)

T: +43 1 3103256 4820

E: wettmayer@kpmg-law.at

Belgium:

Wouter Caers

Partner (Tax)

T: +3238211973

E: wcaers@kpmg.com

Patrick Geeraert

Partner (Legal)

T: +32 2 708 43 79

E: pgeeraert@klaw.be

Wouter Lauwers

Partner (Legal)

T: +32 2 708 38 68

E: wlauwers@kpmglaw.be

Brazil:

Ericson Amaral

Partner (Tax)

T: +55 11 3940 3375

E: eamaral@kpmg.com.br

Canada:

Jocelyn Blanchet

Partner (Tax)

T: +1 416 777 3016

E: jblanchet@kpmg.ca

Anna Balinsky

Partner (Legal)

T: +86 (21) 5203 1573

E: paula.yu@kpmglegal.com.cn

China:

Michael Wong

Partner (Tax)

T: +861085087085

E: michael.wong@kpmg.com

Paula Yu

Senior Partner (Legal)

T: +86 21 5203 1573

E: paula.yu@kpmglegal.com.cn

Hong Kong (SAR), China:

Shirley Fu

Partner (Legal)

T: +852 2685 7828

E: shirley.fu@kpmglegal.com.cn

Finland:

Ari Engblom

Partner (Legal)

T: +358 20 760 3614

E: ari.engblom@kpmg.fi

Tero Piisi

Senior Manager (Legal)

T: +358 20 760 3475

E: tero.piisi@kpmg.fi

France:

Jerome Talleux

Partner (Tax)

T: +33 1 55 68 49 59

E: jerometalleux@kpmgavocats.fr

Franck Bernauer

Partner (Legal)

T: +33 1 55 68 48 13

E: fbernauer@kpmgavocats.fr

Germany:

Lars Christian Mahler

Partner (Tax)

T: +49 69 9587 3142

E: lmahler@kpmg.com

Ayk Tobias Meretzki

Partner (Tax)

T: +49 40 320 15 5783

E: ameretzki@kpmg.com

Daniel Kaut

Partner (Legal)

T: +49 911 8009299-44

E: dkaut@kpmg-law.com

India:

Vivek Gupta

Partner (Tax)

T: +91 12 4307 4025

E: vivekg1@kpmg.com

Nandita Tripathi

Partner (Tax)

T: +91 12 4307 4036

E: ntripathi@kpmg.com

Indonesia:

Jacob Zwaan

Partner (Tax)

T: +62 21570 4877

E: jacob.zwaan@kpmg.com

Ireland:

Donal Thomas

Partner (Tax)

T: +353 1 700 4306

E: donal.thomas@kpmg.ie

Francis Hackett

Partner (Legal)

T: +353 1 700 4462

E: francis.hackett@kpmg.ie



Global contacts

Italy:

Stefano Cervo

Partner (Tax)

T: +39 02 67 64 41

E: scervo@kpmg.it

Alberto Cirillo

Partner (Legal)

T: +39 011 883166

E: albertocirillo@kpmg.it

Japan:

Yuichi Komakine

Partner (Tax)

T: +81362298190

E: yuichi.komakine@jp.kpmg.com

Luxembourg:

Christophe Diricks

Partner (Tax)

T: +352 22 51 51 5111

E: christophe.diricks@kpmg.lu

Mexico:

Alfredo Cobix Carbajal

Partner (Tax)

T: +52 55 5246 8727

E: acobix@kpmg.com.mx

Netherlands:

Arco Verhulst

Partner (Tax)

T: +31 88 909 2564

E: verhulst.arco@kpmg.com

Jeroen van Gool

Partner (Tax)

T: +31 88 909 1597

E: vangool.jeroen@kpmg.com

Freerk Volders

Partner (Legal)

T: +31 88 909 1600

E: volders.freerk@meijburglegal.com

Marieke Enneman

Partner (Legal)

T: +31 88 909 1500

E: enneman.marieke@meijburglegal.com

Oman:

Ashok Hariharan

Partner (Tax)

T: +968 2474 9231

E: ahariharan@kpmg.com

Poland:

Honorata Green

Partner (Tax)

T: +48 22 528 1153

E: honoratagreen@kpmg.pl

Dariusz Dobkowski

Partner (Legal)

T: +48 22 528 1301

E: ddobkowski@kpmg.pl

Romania:

René Schöb

Partner (Tax)

T: +40 372 377 800

E: rschob@kpmg.com

Russia:

Dmitry Garaev

Partner (Tax)

T: +7 495 937 4444-12825

E: dgaraev@kpmg.ru

South Korea:

Sang Bum Oh

Partner (Tax)

T: +82 2 2112 0721

E: sangbumoh@kpmg.com

Spain:

Carlos Marin Pizarro

Partner (Tax)

T: +34914565962

E: carlosmarin@kpmg.es

Rafael Aguilar Mateo

Partner (Legal)

T: +34 91 456 35 59

E: raguilar@kpmg.es

Sweden:

Tomas Johansson

Director (Tax)

T: +46 709 81 48 91

E: tomas.johansson@kpmg.se

Switzerland:

Simon Juon

Partner (Tax)

T: +41 58 249 53 66

E: sjuon@kpmg.com

Joerg Kilchmann

Partner (Legal)

T: +41 58 249 35 73

E: jkilchmann@kpmg.com

Thailand:

Auaychai Sukawong

Partner (Tax)

T: +66 2 677 2644

E: auaychai@kpmg.com

Benjamas Kullakattimas

Partner (Legal)

T: +66 2 677 2426

E: benjamas@kpmg.co.th

United Arab Emirates:

Stuart Cioccarelli

Partner (Tax)

T: +97124014881

E: scioccarelli@kpmg.com

United Kingdom:

Gavin Little

Partner (Tax)

T: +44 20 7311 6047

E: gavin.little@kpmg.co.uk

Richard Lewis

Partner (Legal)

T: +44 203 078 4036

E: richard.lewis@kpmg.co.uk

Peter Workman

Partner (Legal)

T: +44 121 335 373

E: peter.workman@kpmg.co.uk

United States:

Howard Steinberg

Partner (Tax)

T: +1 212 872 6562

E: hbsteinberg@kpmg.com

Ryan J Kelly

Principal (Tax)

T: +1 267 256 1602

E: rjkelly@kpmg.com

Vietnam:

Ninh Van Hien

Partner (Tax)

T: +84 28 3821 9266 ext: 8202

E: ninhvanhien@kpmg.com.vn



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