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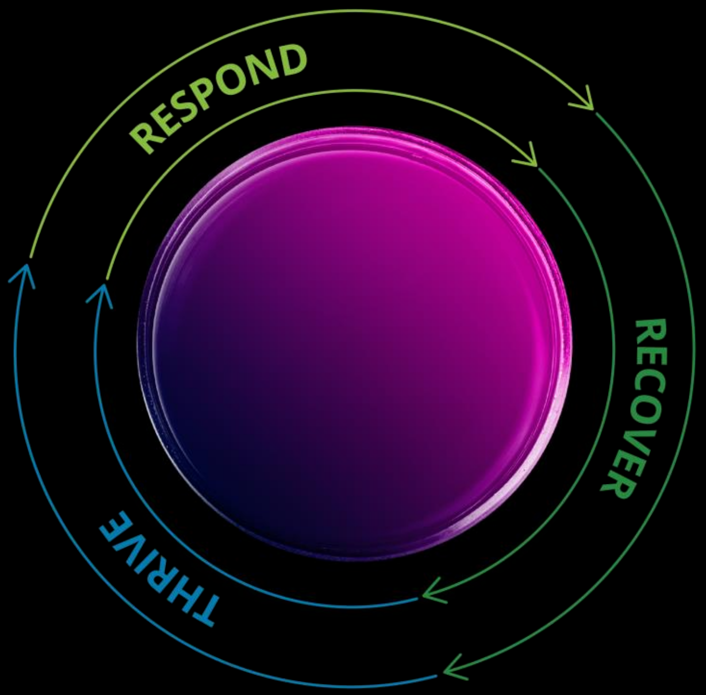

Addressing the impact of COVID 19

Financing and treasury: Tax and legal matters

Key areas of focus for Treasury teams

Indebtedness

Refinancing or restructuring external and internal debt – potential for modification gains and losses, elimination of grandfathered provisions, immediate taxation of gains on debt purchases.

Government-backed funding – could have tax consequences e.g. if at below market interest rates.

Intra-group indebtedness – reduction or increase in funding depending on cash needs will likely have tax and legal implications.

Changes in external debt mix as interest rates change – could change tax exposures to e.g. FX movements.

Liquidity

Cash repatriation – various mechanisms including distributions, upstream loans, repayment of debt, cash pool overdrafts, equity investments – different tax and legal implications may exist in different jurisdictions.

Cash pooling – may be a solution for fluctuating short term liquidity needs. Tax implications include the short or long term characterisation of transactions, withholding taxes, taxation of FX movements, sharing of benefits, deemed distributions, interest deductibility.

FX and Derivatives

Substantial FX volatility – increases the importance of FX exposures being hedged for tax purposes.

Changes to interest rate, commodity and FX hedging strategies using derivatives – taxation of fair value movements leads to cash tax volatility, so mitigate where possible.

Hedges may become economically ineffective – fair value positions could become immediately taxable.

Termination of hedges – may be considered to generate cash; consider timing of taxation of gains and losses.

Other

M&A and other contract renegotiations – force majeure clauses may have been triggered requiring renegotiation of contracts, which may in turn give rise to tax and legal implications.

Supply chain reorganisation – funding requirements may change if, for example, groups were to start moving goods through different territories and new distribution channels. Matters such as treaty analysis and withholding tax clearances may need to be considered.

Practical steps to think about now

1 Tax, Treasury and Legal should connect to understand the impact of short term and medium term planning for repatriation, borrowing, cash, liquidity and risk management.

2 Tax and Treasury should coordinate on implementing any new financial and derivative transactions

3 Tax and Treasury should coordinate on tax implications of any modifications to existing debt instruments

4 Tax and transfer pricing analysis should be performed related to existing financial instruments

5 Tax should review expected profit and loss profiles across jurisdictions, taking into account loss utilization and interest deductibility

Financing and Treasury - *Treasury teams are quickly evaluating cash management, financing needs and hedging priorities. Any actions taken could have wider implications, so it's important that Treasury, Tax, Transfer Pricing and Legal teams work together in designing and implementing strategies.*

Key areas of focus for Tax and Legal teams

Transfer Pricing

What is arm's length in the current climate may be very different from 'normal' – risks could include:

- Impact of credit rating deterioration on ability to borrow.
- Long term cash pool overdraft balances being recharacterized.
- Would call and put options within loan agreements be exercised at arm's length.
- Increased risks to lenders and the value of any guarantees provided.
- Widening of spreads, impacting recent benchmarking analyses.
- Increased need for financial guarantees.

Interest limitations

These may limit the level of deductible interest to a fixed percentage of EBITDA – thus affecting the ability to deduct interest expense where EBITDA levels are lower than anticipated.

Loss utilization

Consider expectations for current year tax out-turn.

Evaluate funding provision and remuneration for treasury services in light of those expectations.

Valuation, impairment and characterization

Inherent gains and losses may be crystallized if financial instruments are transferred or realized in a taxable transaction. Consider prepayment clauses, worthless loss deductions, lending to distressed subsidiaries, etc.

Accounting for taxes

Changes in the economic environment, and treasury response thereto, may have an immediate impact on the next quarter's tax provision.

Disclosure

Consider the impact of worsening financial metrics on tax safe harbors or advance pricing agreements. Also consider other disclosure to tax authorities that might be required.

Transaction costs

Consider tax deductibility of increased loan arrangement and other financing fees.

Legal

Changes in Treasury and Financing activities could trigger a requirement to create, amend or redraft legal documentation.

Indirect tax

Changes in treasury activities could impact on indirect tax recovery.

Respond

- Understand cash requirements and availability around the group, and design repatriation and deployment accordingly.
- Work with treasury to understand transactions in external financial instruments and input into design.

Recover

- Re-evaluate financial needs in light of new operational norms.
- Consider tax attributes, income and loss profile and interest deductibility.
- Re-evaluate the treasury strategy and policies accordingly.

Thrive

- Implement plans to match tax attributes to taxable income generation, taking into account the location of interest expense.
- Appropriately reflect the new OECD Guidelines on financial transactions into revised treasury policies, and document policies adopted.

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