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M&A tax considerations across a range of transactions

Sell-side and reorganizations

In the case of a divestiture or reorganization, addressing taxes early in the transaction process may allow for strategic and administrative advantages that can help enhance after-tax cash proceeds, mitigate tax risks, and reduce disruptions to other workstreams throughout the deal. Below is a sample of high-level questions that dealmakers should consider:

1 How can tax structuring enhance deal value?

- The structure of a sale (stock versus asset sale) may impact after-tax proceeds.
- The allocation of purchase price across assets can enhance tax outcomes for Seller and Buyer.
- Structuring for capital gains treatment can reduce tax liabilities for Sellers.
- Structuring alternatives could make the deal more attractive to Buyers, potentially increasing offers.

2 Has can the value and realizability of tax attributes be assessed?

- Net operating losses, credits, and deductions can add value, but must meet transferability rules and may be limited on use following an ownership change.
- Certain tax attributes may only be realizable if the Buyer has sufficient taxable income.
- Buyers may adjust bids based on expected future tax benefits from tax carryforwards.
- Alternatively, Sellers may be able to utilize attributes to offset taxable gains on the transaction, which may give rise to efficient structuring alternatives.

3 Why should tax issues be identified early?

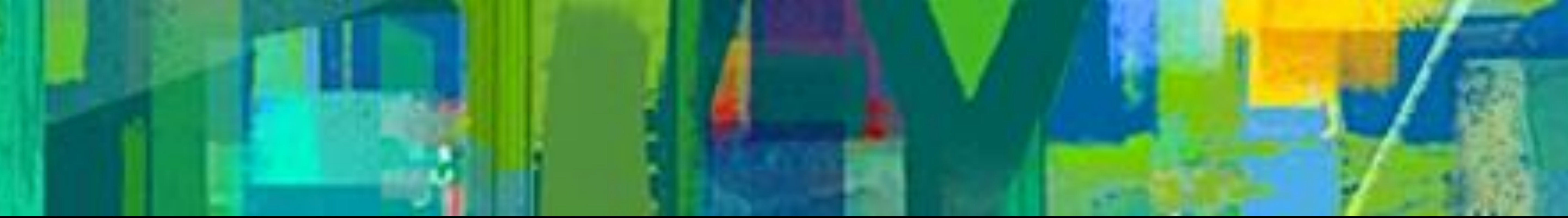
- Identifying tax exposures in advance can help mitigate unexpected purchase price adjustments and last-minute deal disruptions.
- Early Seller-side diligence may help address control over disclosures and risk mitigation which could impact tax escrow or other post-acquisition tax obligations to a Buyer.
- Identification of tax risks before a Buyer begins their due diligence procedures may allow Sellers sufficient time to take action (e.g. amended return filings, voluntary disclosure agreements, etc.) to mitigate potential exposures.
- Key tax risks (e.g., audits, transfer pricing issues) can impact valuation and deal terms.

4 What tax-specific value drivers should be addressed early in the process?

- The sales structure can impact the availability of tax attributes and what potential tax liabilities may carry over in the transaction.
- Tax treatment of transaction costs (e.g., legal, advisory fees) can impact net proceeds.
- Indirect tax considerations (e.g., sales tax, value-added tax) should be assessed early.
- Cross-border tax implications can create unexpected compliance risks.
- Tax matters in transition services agreements, if applicable, should be considered.

5 What should a Seller be prepared to provide to potential bidders related to tax matters to streamline the sale process?

- Understand the need for a tax factbook versus a vendor tax due diligence report and whether carve-out financial statements are needed.
- A summary of Seller-preferred exit structure can streamline negotiations.
- Seller model or calculator outlining tax benefits related to proposed transaction structure could increase sales proceeds for the value of such tax benefits.
- Compiling tax return data, audits, and financials upfront can accelerate tax due diligence.
- High-quality data can allow bidders to focus their tax diligence process on key areas specific to their needs.
- Identifying potential tax red flags in advance can mitigate such tax risks and can have an impact on other workstreams (e.g., quality of earnings, purchase agreement, structuring).



Let’s talk

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