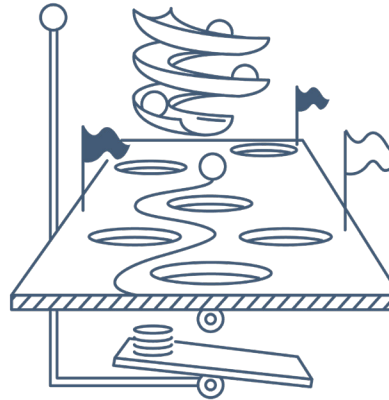


8 TAX ISSUES FOR M&A IN SURREAL TIMES

It is easy to lose sight of tax considerations in the middle of a corporate acquisition, but you can minimise surprises with forward thinking and a clear view of what the key issues might be. Here are 8 points to keep in mind.

1 TAX PITFALLS WITH EARN-OUTS

Earn-outs can be a good way to bridge price expectation gaps, especially if founders are selling, but can cause material tax charges if treated as employment income. Red flags include only employees benefitting from the earn-out and dependency of the earn-out on personal performance.



2 AVOID UPFRONT TAX LOSSES PAYMENTS

Many targets will have tax losses that in theory could be valuable in future, and sellers may want to monetise those immediately. However, there are many restrictions on the use of tax losses after a sale and buyers should avoid paying for losses upfront or assuming these will be available when pricing.

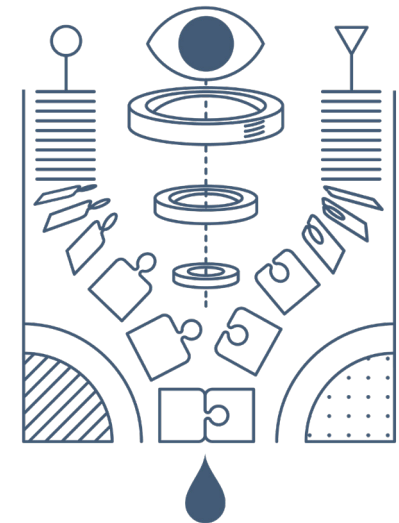
3 TAX AND W&I INSURANCE

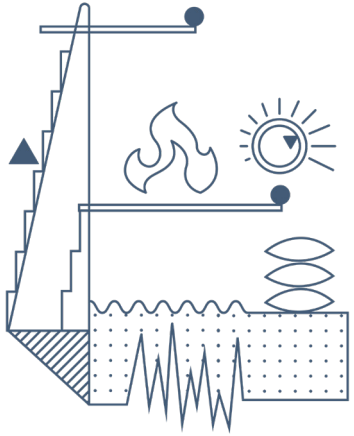
W&I insurance can be helpful, but policies typically limit tax coverage. Most insurers exclude some tax risks entirely, e.g. transfer pricing, as well as excluding known risks. This means insurance provides less cover than a typical tax covenant. Extra cover may be available, but at higher cost.



4 DEBT RESTRUCTURING PRE-SALE

Pre-sale restructuring of distressed targets is common, but it is critical to look at the detail to ensure no tax charges arise. Even on a relatively simple debt for equity swap there are numerous hurdles to a tax-neutral result - tax charges can leak considerable value.





5

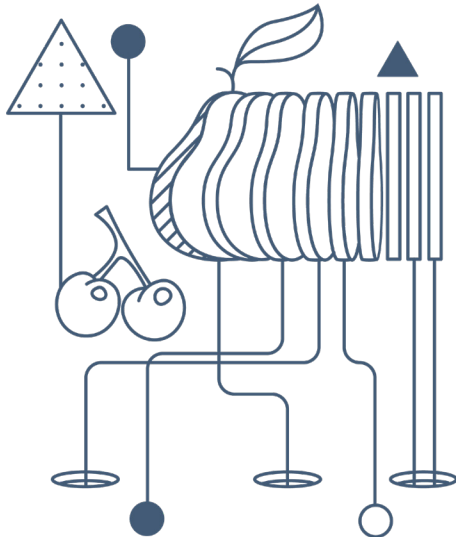
KNOW YOUR RISK APPETITE

Lots of targets won't necessarily be "clean" in tax terms. If an acquisition is competitive it is important to know in advance your appetite for tax risk, what cover you will realistically get from sellers/insurers, who needs to approve taking on a risk and how fast your internal processes can move.

7

CHERRY-PICKING ASSETS

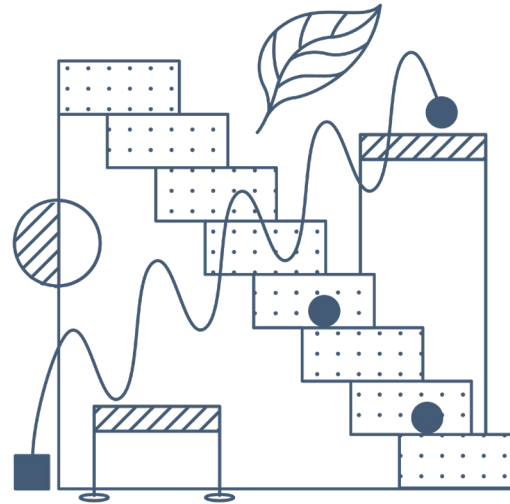
Buyers might only want part of a business. When splitting up a corporate group it is important to bear in mind the tax de-grouping charges that can arise, the tax treatment of any reorganisation that is needed pre-sale, and secondary liability exposure to unpaid taxes of entities not acquired.



6

EQUITY INCENTIVES

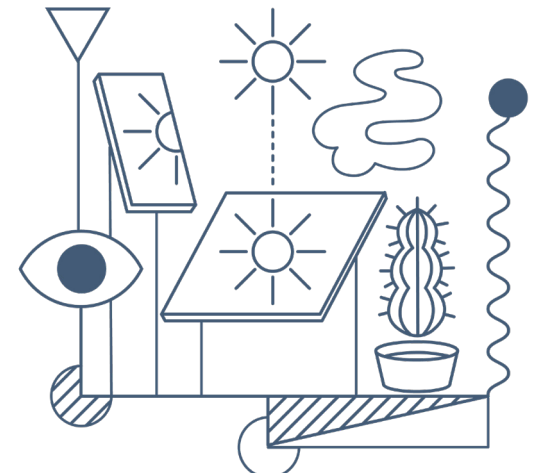
Depressed equity valuations offer an opportunity to set up incentive plans without triggering tax charges, but take care not to set performance hurdles too low. Low hurdles combined with a swift recovery could lead to equity vesting unexpectedly rapidly – and call into question the original tax valuations.



8

DON'T FORGET TAX LIABILITIES MAY HAVE BEEN DEFERRED

As part of its Covid-19 response the government allowed businesses to defer tax liabilities, under general schemes and bespoke "time-to-pay" arrangements. If your target has deferred a tax bill clearly it is important to know exactly what has been deferred, when it is due and how the cost will be funded.



>2,500

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If you would like a more comprehensive view of what we're seeing in the current environment and what steps you should take to maximise your chances of success, please get in touch.

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