UK Tax Implications on Business Restructurings

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As the government slowly ‘unlocks’ the British economy, and activity adapts to the new normal alongside coronavirus, the hope must be that latent consumer demand triggers a rapid, equally dramatic, recovery in GDP and jobs, allowing businesses to boost cash-flow and repay debt. An economic recovery of this nature (the sharper the point of the ‘V’, the better) would allow the gradual withdrawal of governmental support (e.g. from 1 August 2020, employers will be asked to contribute towards the cost of furloughed employees’ wages under the Coronavirus Job Retention Scheme (CJRS), and the scheme is due to close entirely on 31 October 2020) without occasioning further disruption.

However, considering the magnitude of government intervention that has been required and the scale of the downturn in the underlying economy, the risk must be that without this critical support, businesses that are already distressed, and possibly now very highly leveraged, will be exposed to an economic climate in which they will struggle to maintain cash-flow at a level necessary to continue as a going concern. The more the ‘V’ of the recovery starts to look like a ‘U’ (or, even worse, an ‘L’), the greater the pressure. Unfortunately, early data suggest that the withdrawal of government support will indeed occasion additional distress and business failure.

Debt restructuring, and ultimately formal insolvency might be the only options for distressed companies but understandably, taxation isn’t necessarily at the forefront of business thinking at such times. However the tax implications (for borrowers, lenders and guarantors) arising from business restructuring proceedings should not be underestimated. Attempts to improve a company’s cash-flow position through debt restructuring can inadvertently trigger tax liabilities which, obviously, undermine the efficacy of such moves. The taxation of corporate debt in the UK is set out in the loan relationships regime. In broad terms, the tax will follow the accounting treatment. Please see our alert that summarises some of the key tax issues for debtor companies to keep in mind. Different, and (in certain circumstances more complex) rules apply to creditor and guarantor companies.

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