

Businesses of all sizes across the nation have been forced to cease operations after being deemed nonessential. Many of the enterprises that are permitted to remain open have experienced increased costs and drastic reductions in revenue. All the while, the usual overhead costs such as rent, payroll, debt service and utilities continue to accumulate.

For many businesses, continuing operations after experiencing such a harmful economic environment will require considering a range of options and pursuing several different forms of relief.

How Can Andersen Help?

At Andersen, we offer a wide range of commercial reorganization, restructuring and bankruptcy services for debtors, creditors and other impacted parties involved in distressed situations.

Our services focus on improving outcomes in difficult financial situations by helping affected parties achieve objectives such as:

- Minimizing cash taxes and optimize surviving tax attributes.
- Understanding the tax and valuation implications for debtors, creditor committees, secured and unsecured lenders, and other constituents.
- Evaluating restructuring alternatives, tax-free reorganizations, taxable asset sales and other strategic transactions.
- Performing liquidation, going-concern and solvency analyses.

Many companies have turned to Andersen to assist in addressing these challenges because of our ability to identify issues early in the process which translates into timely, informed and more favorable results.

Consider Critical Tax Matters

There are certain critical tax matters that may be important to enterprises as they evaluate a financial restructuring and/or bankruptcy. Overriding tax objectives throughout the various phases of financial restructuring and/or bankruptcy that enterprises should consider include:

- Minimizing current cash taxes associated with debt restructuring and divestitures, if any.
- Avoiding interest deferral or disallowance provisions on Original Issue Discount (OID) associated with modified debt.
- Minimizing the Net Present Value (NPV) of future cash taxes.
 - Maximizing the amount of tax net operating loss (NOL) carryforwards utilizable against post-organization taxable income.
 - Maximizing the amount of other tax attributes (e.g., tax credits, Sec. 163(j) carryovers, basis in assets) that survive the restructuring.
 - Minimizing the limitations on post-restructuring use of NOLs and other favorable tax attributes.
- Maximizing the future tax efficiency of the enterprise.

Andersen can assist enterprises in evaluating these critical tax matters and work with the enterprise to outline their attribute profile and/or debt profile to identify opportunities that add value and minimize risk.

Tax Considerations and Opportunities

Andersen has extensive experience advising enterprises through all aspects of their financial restructuring and/or bankruptcy process – planning, implementation, compliance, and controversy. We help enterprises ensure that the tax positions are practically and properly aligned with the goals of the enterprise. Examples of tax issues and opportunities that must be considered include:

- Cancellation of debt (COD) income may result from changes in debt instruments.
 - Change in payment terms (forbearance) or security.
 - Change in interest rate or addition of contingent interest.
 - Related party debt acquisitions.
- Restructuring debt that is treated as publicly traded may result in COD income and the creation of OID that must be tested under the AHYDO rules, which may affect deductibility of interest.
- An inadvertent or unwanted ownership change under Sec. 382, with severe limitations on tax attributes, may result from:
 - Increased levels of public trading.
 - Equity issued in connection with debt restructuring.
 - Worthless stock deduction claimed by a 50% shareholder.
- Directors and officers will want to avoid personal liability for trust fund taxes.
- Restructuring to address the attribute reduction rules in connection with debt modification.
- Adjusting restructuring plans to improve federal, state and international tax profile.
- Modeling alternative attribute reduction methodologies.
- Using taxable transaction to generate post-transaction attributes (e.g., basis).
- Accelerating losses to reduce net unrealized built-in loss (NUBIL) and recognized built-in loss (RBIL) consequences.
- Managing ownership changes through restrictions on stock or by bankruptcy court order.

The Takeaway

The COVID-19 pandemic represents an unprecedented event for businesses of all sizes across the country. Whether a business was forced to completely shut down or was permitted to continue operations at a drastically reduced rate, emerging from such a harmful economic environment may require a financial restructuring and/or bankruptcy. Andersen has extensive experience in assisting businesses at all stages of the financial restructuring and/or bankruptcy process. Our experienced professionals work hand-in-hand with enterprises and their advisors to develop, implement and document tax positions that will directly benefit the enterprise. We provide the technical competence of a global tax firm with the responsiveness of a boutique firm, all with superior focus and creativity.

For further information please contact your Andersen advisor.

