



Mergers & Acquisitions Tax Services

M&A Tax

Driving efficiency throughout
the life of a deal

kpmg.com







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KPMG's Mergers & Acquisitions Tax Services

Delivering on the needs of our clients

Every transaction has tax implications. Whether you are contemplating an acquisition, disposition, merger, or restructuring, understanding, and planning for these implications can mitigate transaction risks and enhance opportunities. The Mergers & Acquisitions (M&A) Tax practice assists clients by creating tax efficiencies throughout the life cycle of a client's business. KPMG's M&A Tax services include the following offerings, among others:

- Tax Structuring Consulting – to determine and shape the immediate and long-term tax impact of a client's acquisitions and dispositions
- Tax Due Diligence – to apprise clients of the potential risks and benefits associated with a specific transaction
- Acquisition Integration Services – to determine the most tax-efficient way to combine the target and acquirer following the transaction
- Partnerships and Joint Ventures Tax Consulting – to address the complexities and benefits of using partnerships in acquisitions and existing structures
- Tax Restructuring Services for Troubled Companies – to assist clients at virtually every phase of the transaction, including debt negotiations, layoffs and shutdowns, bankruptcy petitions, and liquidations
- Tax Attribute Studies (including section 382 studies) – to help clients determine the proper use of tax attributes such as net operating losses
- A full range of other services including earnings and profits analysis, stock basis studies, transaction and bankruptcy cost analyses, and income tax provision advisory services

M&A Tax professionals understand the evolving tax environment. We recognize that tax decisions are subject to increasing levels of scrutiny, assets are moving around the world at a breathtaking pace, and events on the other side of the globe can have an impact on an organization, regardless of its size.

KPMG's service premise is simple: We listen to our clients. We evaluate a client's perspective and priorities and design a tailored methodology using our real-world experience and technical know-how.

We focus on converting this experience and know-how into tangible value. When we offer planning methodologies to meet a client's objectives, we anticipate future consequences and obstacles to any action we suggest.

Global M&A tax – bringing global M&A local

New participants and emerging markets are increasingly present in the global marketplace. These realities, combined with growing cooperation between national tax authorities, make understanding global and local tax implications a critical step for every transaction.

M&A Tax professionals have the insight and experience to deliver on your needs globally. We have strong working relationships with KPMG International member firm professionals and are part of a global network who keep in regular contact with each other, our member firms' clients, and tax authorities. Therefore, we understand the practical impact of tax developments from one country to the next. We are quick to spot opportunities, and we know how to act on those opportunities to help member firms' clients and their shareholders.

The KPMG difference

No two transactions are the same, but there are similarities and common themes. Our collective knowledge has helped us to develop procedures to coordinate the tax aspects of a multitude of transactions, from large, multijurisdictional transactions to small, domestic deals. Our mission is to help companies ensure that a transaction adds value for their shareholders.

Putting the pieces together – An overview of M&A Tax Services

Tax structuring consulting

Unforeseen tax implications can prevent mergers and acquisitions from achieving their expected value. This can be especially true in strategic and private equity transactions that extend across borders, time lines, and tax jurisdictions.

KPMG's M&A Tax practice can help your organization evaluate new opportunities to unlock the value of your M&A deals.

Merger and acquisition tax planning

KPMG's M&A Tax professionals provide tax planning services to assist clients in analyzing the potential income and nonincome tax implications of a proposed merger or acquisition. Our thorough, coordinated approach can help achieve a post-acquisition organizational and financial structure that is tax-efficient, both domestically

and internationally, to enhance the value of a merger or acquisition. Moreover, our experience with both strategic and private equity clients allows us to tailor our approach to achieve our clients' specific long-term goals.

Merger and acquisition tax planning includes:

- Structuring the transaction in a tax-efficient manner
- Advising on ways to improve the tax benefits related to transaction financing
- Providing comments on stock or asset purchase agreements
- Assisting with integration of the acquired businesses
- Contemplating the client's ultimate exit strategy to reduce tax exposures upon divestiture.



Disposition tax planning

Like acquisition tax planning, our disposition tax planning services assist clients in analyzing the potential tax implications of a disposition of a subsidiary, division, or a select group of assets. Keeping in mind management's goals for the transaction, we help our clients achieve a tax-efficient structure for the disposition, including obtaining a favorable price based on potential tax attributes and after-tax cash proceeds.

Disposition tax planning includes:

- Restructuring to prepare the unwanted business for sale
- Performing vendor due diligence to make the seller aware of issues that might arise when a buyer performs its due diligence, and performing due diligence on the buyer if the purchase consideration includes buyer stock
- Determining the amount and character of the seller's gain or loss
- Conducting stock basis and earnings and profits studies for subsidiaries
- Considering alternative structures for the sale and providing comments on the tax aspects of the stock or asset purchase agreement.

Spin-offs

The spin-off of a business by a corporation to its shareholders often can be an effective method to enhance the success of both the retained business and the spun-off business. Accomplishing such a separation tax-free is almost always a necessity. KPMG analyzes the requirements for a tax-free separation in the context of a client's proposed spin-off transaction and advises on the structuring necessary to best position for tax-free treatment. If tax-free treatment is possible, KPMG can provide a tax opinion or assist with requesting a private letter ruling from the Internal Revenue Service (IRS).

Spin-off credentials:

- Our professionals have been directly involved in writing and reviewing the applicable Treasury regulations under section 355, which govern tax-free separations.
- Our team has extensive experience with large spin-offs and separations by both publicly traded and privately held companies. KPMG has helped numerous clients receive favorable letter rulings from the IRS on complicated spin-off transactions.
- Our team includes a deep bench of professionals who have served in the government (IRS Office of the Chief Counsel – Corporate), authoring section 355 regulatory and administrative guidance, and as adjunct professors in corporate taxation in numerous law school and LLM programs throughout the United States.

Tax due diligence

In any deal, tax due diligence comes down to two questions: “Is it a material exposure?” and “What can be done about it?” KPMG’s practical tax due diligence provides the tax intelligence our clients need to help answer these questions and achieve the value they intend from their deals.

For companies considering a merger or acquisition, tax due diligence can represent a difficult balance between too much investigation and too little. In the global arena—where tax due diligence is increasingly complex—it is crucial to the success of the deal that our tax due diligence team focuses on material exposures and is mindful of transaction goals.

Practical tax due diligence

KPMG’s M&A Tax practice can support merger and acquisition efforts with practical tax due diligence. As the first step in a merger or acquisition, we provide our clients due diligence findings they can use to plan a transaction. We help identify material tax exposures, which can then be addressed in the negotiating process and the ultimate deal structure. We tailor our investigations to meet each client’s business goals and strike a balance between managing exposures and the time pressures of the deal.

Anywhere in the world

To provide tax intelligence anywhere our clients need it, through the network of KPMG International member firms, we draw upon one of the largest networks of M&A Tax professionals in the world. We can help clients assemble M&A Tax due diligence professionals with the right industry experience, as well as the appropriate international, regional, or local focus.

We also pay close attention to coordinating the efforts of these diversely skilled tax professionals and to coordinating our team with our client and its other outside advisers. At KPMG, we understand the dynamics of a deal team and work to coordinate our tax advice with other advisers to achieve efficiencies and make sure that all providers are working with consistent information. This allows us to prioritize and report on significant tax issues and keep participants continuously informed.

Tax due diligence: Components

To obtain an in-depth grasp of material tax exposures, we focus on the following target and buyer issues:

- *Industry context* – Understanding industry issues that affect the deal
- *Business model* – Gaining an understanding of the target’s business operations by reviewing financial data, tax returns, prior acquisitions, state and local tax filings, compensation and benefit plans, and international tax filings
- *Tax jurisdictions filings* – Assessing the impact of tax laws in applicable U.S. states and foreign countries, and evaluating the need for additional tax filings
- *International operations* – Assessing the impact of international trade, customs, and tax laws, and evaluating the need for additional filings
- *Tax positions* – Understanding the positions the target has previously taken and evaluating potential tax exposures

Acquisition integration services

There is a difference between closing the deal and completing it. Some studies show that 80 percent of mergers fail to increase shareholder value. Organizations can improve the odds of success for a merger or acquisition by tapping synergies as soon as possible after closing. Duplicate entities, inefficient international planning structures, tax technology, expatriate assignments, and other factors are among the candidates for rationalization in the new enterprise after the ink is dry.

Our services are aimed at helping clients obtain or enhance tax synergies from the deal. Working closely with our global tax network of KPMG member firms and disciplines, our acquisition integration professionals can help clients identify and streamline inefficiencies in their post-acquisition entity structures.

Our professionals help clients streamline their post-acquisition business structures by:

- Summarizing the client’s post-acquisition organizational structure
- Understanding and summarizing the tax compliance profile of each relevant entity
- Calculating and summarizing the tax attributes of each relevant entity
- Summarizing business objectives of the existing entities
- Identifying duplicative entities between the target and acquirer
- Identifying dormant entities
- Determining the client’s business needs going forward with respect to its organizational structure and determining a leading tax-efficient structure that aligns with those business needs
- Providing suggestions on simplification of the organizational structure, from both a business and tax perspective, taking into account the client’s business needs and U.S. federal and state and foreign tax issues
- Aligning the tax positions of the target and the acquirer
- Harmonizing international assignment programs throughout the new organization
- Preparing parts of the target for ultimate disposition.

Partnerships and joint ventures tax consulting

Limited liability companies and the so-called “check-the-box” regulations provide companies flexibility in structuring joint ventures as “flow-through” entities for tax purposes, while preserving legal liability protection. This flexibility creates opportunities to structure acquisitions and joint ventures with partnerships.

Our M&A Tax professionals are experienced with the complexities of structuring partnership transactions and advising our clients on the related tax consequences. We pay close attention to the partnership agreements because they govern the economic arrangement of the deal.

We focus on the following:

- Assisting clients in understanding the tax consequences of the partnership agreement to verify consistency with the understanding of the economic arrangement
- Considering the tax consequences of the partnership agreement and advising our clients about situations in which the agreement might not be respected for income tax purposes
- Modeling alternative allocation methods for contributed property and advising our clients on the related income tax consequences
- Computing a partner’s tax basis in its partnership interest
- Advising clients on the consequences of optional basis adjustments
- Understanding and advising clients on the consequences of partnership debt allocations to avoid unexpected gain recognition
- Structuring exit strategies.

KPMG’s partnership, check-the-box entity, and other pass-through entity credentials:

- Extensive experience as former members of the IRS Office of Chief Counsel Passthrough and Special Industries, including writing and/or reviewing all regulations published between 1988 and 2002 under sections 465, 469, 701, 704(b), 704(c), 707, 731, 752, 1361, 1363, 1367, 1368, 1374, and 7701 (check-the-box regulations)
- Participation in relevant tax advisory bodies, including the acting vice chair of the Partnerships and LLC Committee of the Section of Taxation of the American Bar Association and the current chair of the American Institute of CPAs Partnerships Technical Resource Panel
- Consistent contributions to the *Journal of Taxation*, *The Practising Law Institute*, *BNA*, *Tax Adviser*, and *Tax Notes* on partnership and pass-through entity issues

Tax restructuring services for troubled companies

Even the most successful business is vulnerable to changing market forces and hard times. Sudden financial challenges may require an organization to rework its financial structure or even to seek bankruptcy protection. Many companies are unfamiliar with the restructuring process, which, with numerous parties competing for limited rewards, can be highly adversarial by nature. A creditor or a troubled company would best enter this arena flanked by seasoned professionals.

Part of KPMG's M&A Tax practice, our Tax Restructuring Services (TRS) group includes professionals who can provide organizations in financial difficulty with the right team. Our clients, sometimes unfamiliar with the processes associated with restructurings, look to our TRS professionals for answers and support. We know the proceedings, we know the tax issues, we know the players—and we have assisted many clients through restructurings.

Services for financially troubled companies

A debt workout is certainly not business as usual. Executives who have been focused on managing the day-to-day operations of a business must suddenly shift their sights to creditor negotiations that may determine the organization's very survival. A debtor client may be struggling to avoid liquidation; a creditor client may be struggling to stop the bleeding of cash due to a troubled debtor. In either case, tax issues that arise in a debt restructuring can be financially devastating.

We help our clients focus on the priority issues, including:

- Understanding the difference between the tax consequences of a reorganization outside a bankruptcy proceeding and the tax consequences of a reorganization within a bankruptcy proceeding
- Identifying and planning for the tax consequences arising in debt modifications, debt cancellations, and negotiated settlements
- Mitigating potential limitations on the use of net operating losses and other valuable tax attributes
- Determining the tax cost of asset sales

KPMG credentials in working with troubled companies:

- KPMG was recently recognized to be at the top of the BankruptcyData.com list, in part because it provided tax assistance on some of the largest and most complex bankruptcies declared over the past three years.
- KPMG's team members have contributed to the drafting and reviewing of Treasury regulations section 1.382-9 (relating to the application of section 382 to companies in bankruptcy).
- KPMG received the first private letter ruling from the IRS treating built-in cancellation of debt income as reducing net unrealized built-in loss and allowing the application of sections 382(l)(5) and (6) (change of control upon emergence from bankruptcy) to consolidated groups.
- Our professionals include the coauthor of *Bankruptcy and Insolvency Taxation*, who is also an adjunct professor at the Georgetown Law Center LLM Program, Taxation of Bankruptcy and Workouts course.

- Calculating a corporation’s tax basis in its subsidiary corporations
- Understanding the tax effects of intercompany reorganizations
- Determining the tax effects of contested income and contested liabilities.

Services for companies in bankruptcy

The pressures on a company’s management during bankruptcy proceedings are intense and include negotiating with the creditor committee, preparing a plan of reorganization, responding to due diligence requests, evaluating potential asset sales, and determining which creditor claims (including tax claims) to protest. Many executives experience a bankruptcy only once during their careers, often without the assistance of a full workforce.

In these moments of crisis, KPMG’s TRS practice provides experienced advisers who have faced these challenges many times before, who know the bankruptcy process well enough to anticipate what issues will arise, who have in-depth knowledge of these tax issues, and who can project credibility to the players on the other side of the table. In short, we provide stability and reassurance when our clients need them most.

The obstacles surrounding a troubled company are intimidating. KPMG’s TRS team helps position debtors and creditors for success so they can overcome obstacles and return to running their business.

The M&A Tax practice’s TRS team focuses on the many key bankruptcy issues, including:

- Quantifying the corporation’s tax attributes, such as net operating losses, and determining any existing limitations on those attributes
- Identifying issues affecting the individual members of the company’s consolidated tax group
- Determining any limitations on the deductibility of expenses incurred in the bankruptcy proceeding, such as interest and professional fees
- Quantifying the tax consequences of the reorganization plan and communicating those consequences to the company’s creditors
- Quantifying and planning for the tax impact of asset sales under section 363 of the Bankruptcy Code
- Assisting in the preparation of the tax section of the bankruptcy plan disclosure statement
- Identifying and resolving income, payroll, and sales tax claims
- Determining whether to file a Bankruptcy Code section 505(b) request
- Analyzing the effects of favorable Bankruptcy Code sections on the use of various tax attributes
- Examining tax effects of debt restructurings and debt cancellations
- Evaluating tax effects of intercompany reorganizations, such as subsidiary liquidations
- Addressing the impact of the excess loss account provisions of the Treasury regulations
- Handling the proper tax treatment of liquidating trusts.



Tax attribute studies and computational services

Change-of-control studies

We provide change-of-control studies (aka section 382 studies) to determine the impact of a corporation's equity transactions, as well as certain equity transactions of its shareholders, on the corporation's ability to use specified tax attributes (for example, net operating losses). If more than a 50 percentage point change in ownership occurs, a corporation's tax attributes may be subject to a limitation following that change. We assist clients by determining whether an ownership change has occurred and the consequences of such a change on the client's ability to use its tax attributes in the future.

Earnings and profits analysis

We provide earnings and profits (E&P) analysis services to evaluate the tax character (capital gain, return of basis, dividend) of distributions made by corporate entities to their shareholders. This calculation is also relevant in determining the tax consequences of certain intragroup reorganizations, both domestic and foreign. KPMG's M&A Tax practice has a national team of professionals who specialize in the technical provisions of the tax law that govern the analysis and determination of E&P.

Stock basis studies

Quantification of stock basis can be of critical importance for various reasons. For example, a company might need stock basis calculations to determine the gain or loss upon the sale of a subsidiary out of a consolidated group, to compute the amount of a worthless stock deduction with respect to a consolidated group subsidiary, to calculate the reduction in tax attributes following certain cancellation of debt events, or to monitor potential income triggering due to so-called excess loss accounts (negative stock basis).

We have market-leading software that assists with section 382 studies, E&P analyses, and stock basis studies.

Section 382 credentials:

- As former IRS and Treasury professionals, our professionals have been directly involved in writing and reviewing the Treasury regulations under section 382.
- We have a national network of dedicated section 382 advisers and study reviewers.
- Our national section 382 focus group helps develop firm positions on topics such as poison pills and stock lending transactions.
- We have market-leading software to assist in our thorough analysis.

Transaction and bankruptcy cost analysis

With certain transactions, a multitude of Treasury regulations, IRS administrative materials, and judicial decisions collectively provide guidance regarding the tax treatment of various types of costs incurred. Depending upon the type of transaction, these rules often require taxpayers to compile documentation within a specified time to evidence the deductibility of these costs.

In some instances, certain transaction costs will qualify for “safe harbor” treatment under recent IRS guidance. In these cases, KPMG’s M&A Tax practice assists clients in their evaluation of the benefits and detriments of applying the safe harbor.



Income tax provision ASC 740 advisory services

We provide tax advisory services relating to the accounting for income taxes issues associated with M&A transactions.

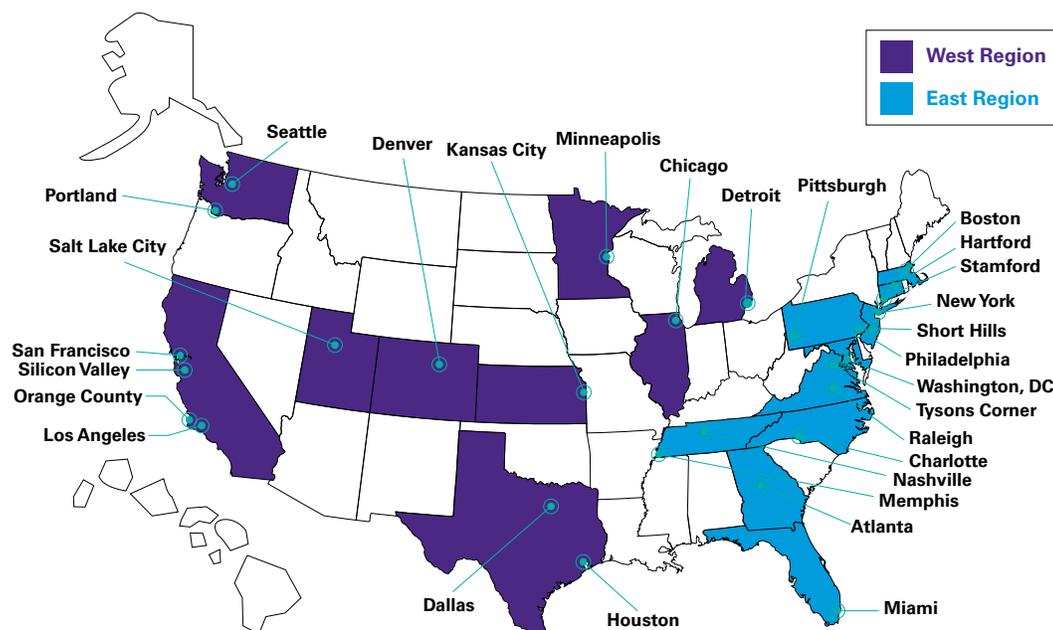
Our professionals work with the financial reporting and corporate tax departments with respect to the complexities of ASC 740, including the following:

- Providing ASC 740 technical advisory services for significant transactions, including mergers, acquisitions, liquidations, dispositions, spin-offs, joint ventures, reorganizations, and restructurings

- Preparing documentation to help clients support their accounting for uncertain tax positions
- Assisting clients in their preparation of the tax section for carve-out financial statements and related disclosures required for SEC filings.

We work where you do

KPMG's M&A Tax practice has offices coast to coast dedicated to covering transactions and creating value for our clients.



Tax resources and knowledge sharing

KPMG offers a range of resources to alert clients to breaking tax news. These alerts keep our clients apprised of trends and key issues and help them understand how new developments may affect their business. These resources include:

- **KPMG TaxWatch Thought Leadership Series:** KPMG TaxWatch offers finance and tax professionals timely information needed to do their jobs more effectively. Through a series of Webcasts, seminars, and podcasts, KPMG summarizes current tax, regulatory, and legislative developments, and discusses how those developments might affect your business.
- **TaxNewsFlash:** KPMG’s TaxNewsFlash provides e-mail alerts of breaking, tax-related legislative, regulatory, and judicial developments. Since its launch in July 1999, TaxNewsFlash-United States has focused on providing companies with news of U.S. federal and selected state tax developments within hours of release. Visit TaxNewsFlash at www.us.kpmg.com/microsite/taxnewsflash/.
- **International editions** of TaxNewsFlash provide periodic tax updates for the Americas, Europe, and Asia-Pacific regions. The updates also cover transfer pricing and trade and customs. Industry-specific editions are available for exempt organizations and cooperatives.
- **KPMG Tax Governance Institute:** The KPMG Tax Governance Institute creates an open forum for board members, corporate management, stakeholders, and government representatives to share knowledge regarding the identification, oversight, management, and appropriate disclosure of tax risk. Visit the KPMG Tax Governance Institute at www.taxgovernanceinstitute.com.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates.









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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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