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McKenzie.**

An abstract graphic consisting of multiple overlapping, glowing blue lines that form a wave-like pattern across the center of the slide. The lines are composed of small dots and connect to form a mesh-like structure that undulates horizontally.

Managing Supply Chain Disruption

The Importance of Tax in the Response to COVID-19 | April 24, 2020

Speakers



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Agenda

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Respecting the Structure, Substance and Tax Nexus Issues

2

Managing Stress to Your Structure

3

Should Companies Consider Restructuring?

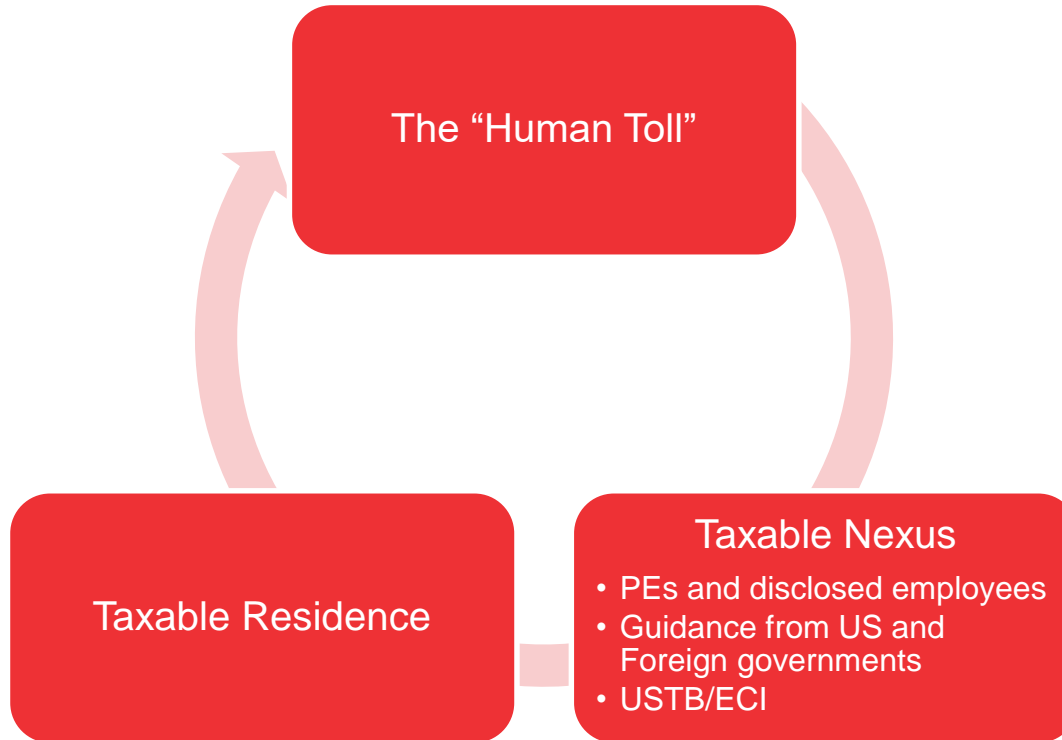
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Practical Takeaways

1

Respecting the Structure, Substance and Tax Nexus Issues

People Impact and Implications



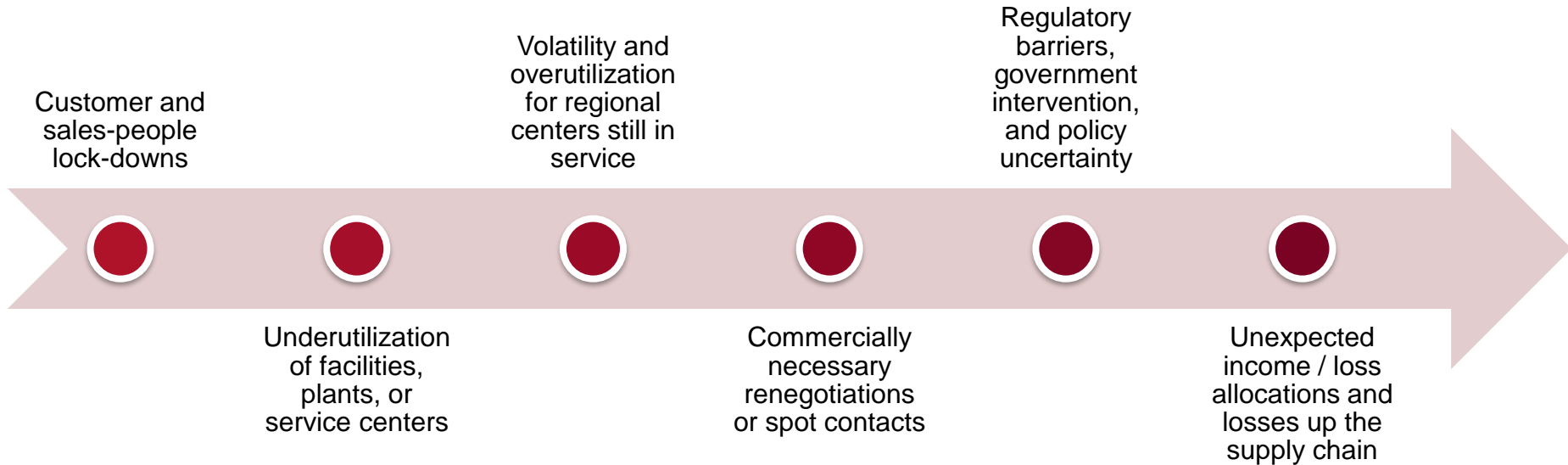
DEMPE/Substance

- Impact of Current Environment/Restrictions on DEMPE/Substance
 - In country meetings/actions
 - Compliance with tax rulings/holidays
 - Track records (before and after COVID-19) are important

2

Managing Stress to Your Structure

Pressures Along Your Supply Chain



Example: Service Provider Under COVID-19

- US parent; foreign principal; and LC SvcCo (could be LRD or CM), but **territorial sales are zero** in its support region.
- If LC SvcCo still has expenses and is typically remunerated cost+, but there is no activity, does it still receive its remuneration and why?
- If expenses are typically allocated via sales to LC SvcCo (e.g., mfg), but sales are zero. Do we make the allocation and what are the factors?

Managing Your Rapidly Changing Business

Evaluate new commercial arrangements as potentially new comparable uncontrolled prices / transactions / profit splits.



Triage key positions and historical best method / most appropriate analyses.



Review historical positions holistically with these new arrangements for opportunities.



Remember to document new transactions, potential hard to value intangibles, changes to old transactions, and consider reserve implications

• **NOTE:** Consider DAC 6 Reporting

What Do We Do About Existing APAs or Rulings?

- Changing critical assumptions? Is there any room to adjust?
- What does the US Rev. Proc. or OECD Guidelines say about that?
- Flexibility for ongoing APA negotiations (i.e., where treaty partners have not yet reached agreement).
- APMA Task Force

APAs & Critical Assumptions

Old Template

“The **business** activities, **functions** performed, **risks** assumed, **assets** employed, and financial and tax **accounting methods** and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same”

May 2018 Template

“The Covered Entities’ business activities, functions performed, risks assumed, assets employed, contractual terms, **markets, and economic conditions** faced in relation to the Covered Issue(s) will remain materially the same”

OECD Guidelines Para. 4.146

“There should also be a provision in an APA (perhaps by reference to a range) that provides for possible revision or cancellation of the arrangement for future years when business operations change significantly, or **when uncontrolled economic circumstances** (e.g. significant changes in currency exchange rates) critically affect the reliability of the methodology in a manner that independent enterprises would consider significant for purposes of their transfer pricing.”

Example: Tolling Provider Under Trade Restructuring

- US parent; SG principal; and US TollCo serving both. New FEMA rule forces US TollCo mfg'd products to stay within the US, potentially forcing add'l non-US 3rd party mfg to supply product to foreign principal.
- **Who bears the risk?** Discuss commercial implications to customers and review I/C contracts for flexibility, triage jurisdictional obligations.
- **Who bears the expenses?** Consider which expenses and write-offs, and their characterization, and documentation of such.
- **What is the impact to your structure of the rule, to other departments, and response to rule?** Consider tolling positions, substantial assistance, and other local and knock-on trade and reporting issues, including changes to reserves.

3

Should Companies Consider Restructuring?

Restructuring

- Supply chain diversification & redundancies
- Tax considerations
- Exit taxes
- Contemporaneous documentation for changes

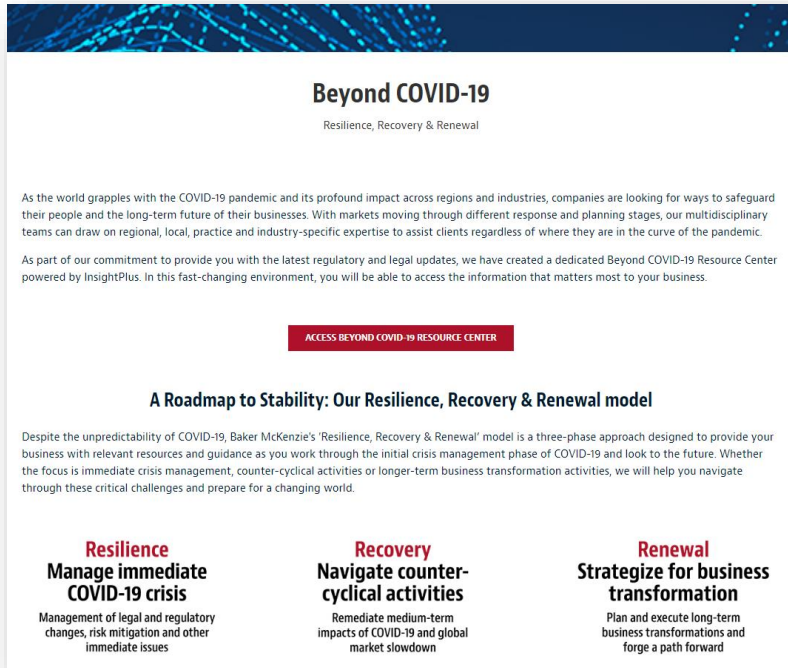
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Practical Takeaways

Beyond COVID-19 Resource Center

Resilience, Recovery & Renewal

Baker McKenzie COVID-19 Resources



Beyond COVID-19
Resilience, Recovery & Renewal

As the world grapples with the COVID-19 pandemic and its profound impact across regions and industries, companies are looking for ways to safeguard their people and the long-term future of their businesses. With markets moving through different response and planning stages, our multidisciplinary teams can draw on regional, local, practice and industry-specific expertise to assist clients regardless of where they are in the curve of the pandemic.

As part of our commitment to provide you with the latest regulatory and legal updates, we have created a dedicated Beyond COVID-19 Resource Center powered by InsightPlus. In this fast-changing environment, you will be able to access the information that matters most to your business.

ACCESS BEYOND COVID-19 RESOURCE CENTER

A Roadmap to Stability: Our Resilience, Recovery & Renewal model

Despite the unpredictability of COVID-19, Baker McKenzie's 'Resilience, Recovery & Renewal' model is a three-phase approach designed to provide your business with relevant resources and guidance as you work through the initial crisis management phase of COVID-19 and look to the future. Whether the focus is immediate crisis management, counter-cyclical activities or longer-term business transformation activities, we will help you navigate through these critical challenges and prepare for a changing world.

| | | |
|---|---|--|
| <p>Resilience Manage immediate COVID-19 crisis Management of legal and regulatory changes, risk mitigation and other immediate issues</p> | <p>Recovery Navigate counter-cyclical activities Remediate medium-term impacts of COVID-19 and global market slowdown</p> | <p>Renewal Strategize for business transformation Plan and execute long-term business transformations and forge a path forward</p> |
|---|---|--|

The Beyond COVID-19 Resource Center site includes materials to help you understand, prepare and respond quickly to the significant challenges COVID-19 poses.

Resources include a variety of client alerts, publications and webinars that cover pressing issues, including employer obligations, force majeure claims, contractual obligations, product safety and liability, corporate government and tax, data privacy concerns and liabilities for supply chain disruptions, among other concerns.



Please visit the Beyond COVID-19 Resource Center site [here](#).

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