

TAX CONSIDERATIONS FOR CHAPTER 11 BANKRUPTCY PROCEEDING

Best Practices for Corporate Executives

NOVEMBER 9, 2021

Presented by:
Alvarez & Marsal
Davis Polk



Davis Polk

A G E N D A

- Webinar Logistics
- Partner Acknowledgement
- Audience Poll
- Speaker Introduction
- Discussion
- Q&A
- Reminders



- Discussion will run from 9-10 AM PT (60 mins).
- Contribute questions via the Q&A feature on your webinar control panel.
- Questions will be answered during the session and at the end. If we don't get to your question, we will try to reply after the presentation.
- The webinar is being recorded. You will receive an email when the video and slides are published.
- We welcome your feedback after the webinar.



Alvarez & Marsal

A B O U T

EXPERTISE

- ❖ Corporate Performance Improvement
- ❖ Private Equity Services
- ❖ Restructuring & Turnaround
- ❖ Tax
- ❖ Disputes and Investigations
- ❖ Valuation
- ❖ Regulatory & Risk Advisory

LEADERSHIP. ACTION. RESULTS.SM

A&M's leadership is about a bias towards action and the willingness to tell clients what we think is needed. Our restructuring heritage sharpens our ability to act decisively. Clients select us for our deep expertise and ability to create and deliver practical solutions to their unique problems.

Davis Polk

DavisPolk

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Practices

- | | | |
|-----------------------------------|------------------------|---------------------------------------|
| Antitrust & Competition | Executive Compensation | Mergers & Acquisitions |
| Capital Markets | Finance | Private Equity |
| Civil Litigation | Financial Institutions | Real Estate |
| Data Privacy & Cybersecurity | Investment Management | Restructuring |
| Derivatives & Structured Products | IP & Tech Transactions | Tax |
| Environmental | IP Litigation | Trusts & Estates |
| ESG | Litigation | White Collar Defense & Investigations |



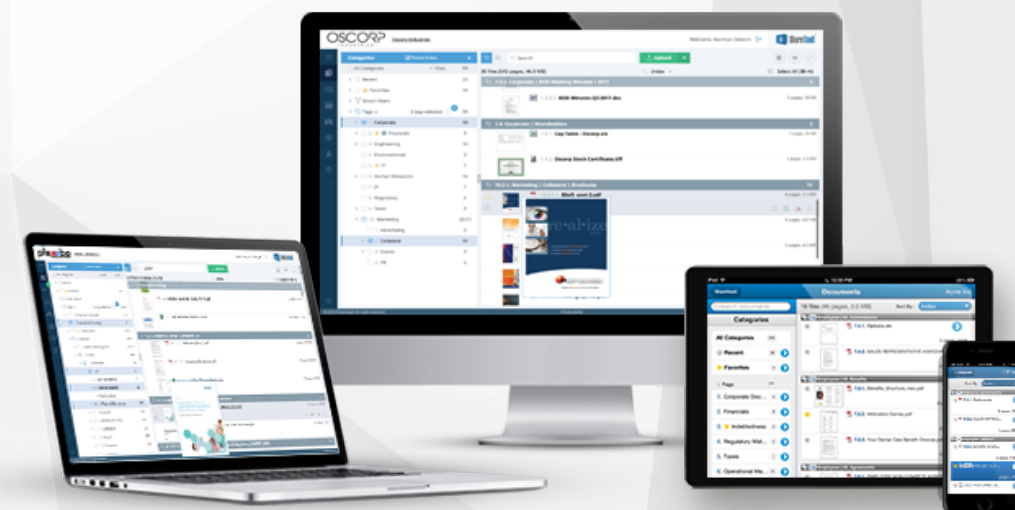
Capabilities

ABOUT

ShareVault

ABOUT

- Easy-to-Use Multilingual Interface
- Award Winning - 24/7/365 Support
- Multiple Entry Pages
- Consistent World-Wide Data Transfer - including China!
- Integration with Box, DropBox, DocuSign, Office 365, and SharePoint



Introducing ShareVault 5.3!

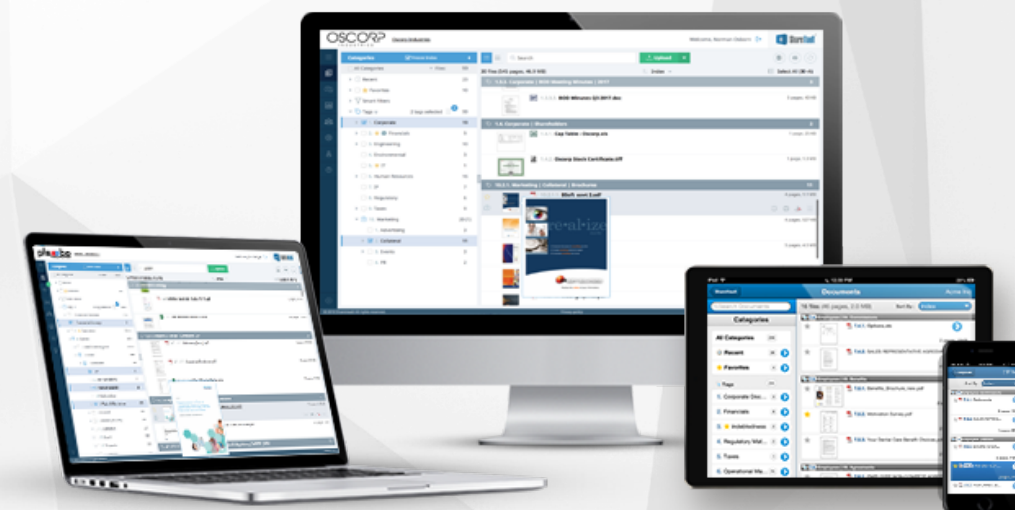
Say goodbye to tracking NDAs and Stay Compliant with our NEW Click-Wrap feature

NEW ShareVault RESTful API with 30+ APIs

Enhanced Activity Summary Report

Improved Control of Handling Unprotected File Types

Improved Visualization of Expired Policies



BRIEF POLL

Please help us understand our audience
by taking our brief poll.



TODAY'S PANEL

MODERATED BY:



Christopher Howe

Alvarez & Marsal

Managing Director



Brian Pedersen

Alvarez & Marsal

Managing Director



William Curran

Davis Polk

Partner, Tax



Melissa Buich

Alvarez & Marsal

Director

O V E R V I E W

How does Chapter 11 bankruptcy affect tax attribute (e.g., NOL, NUBIL) availability post-emergence

How can the bankruptcy proceedings be used to negotiate tax claims; specifically in the state and local jurisdictions

What priority do tax claims have in bankruptcy proceedings

Latest trends and structures in the marketplace



Tax Attribute Preservation

A change in control for tax purposes can restrict tax attributes and increase cash tax liability post-change.

- Tax attributes include NOLs, R&D Credits, Foreign Tax Credits, NUBIL, capital loss carryovers

Bankruptcy “Exceptions”



Election	Considerations	Conditions to Qualify
Section 382(I)(5)	<ul style="list-style-type: none"> • Benefit - no restriction on US income tax attributes post-emergence • Cost - reduction in NOL for interest paid to creditors who equitize • Risk - tax attributes fully restricted if change in control in subsequent two-years 	<ul style="list-style-type: none"> • Dependent on “old and cold” or ordinary course creditors (coordination with creditors and/or debt trading order)
Section 382(I)(6)	<ul style="list-style-type: none"> • Benefit - tax attributes restricted but higher annual limitation applicable than out-of-court scenario as post-emergence (rather than pre-emergence) equity value is used 	<ul style="list-style-type: none"> • Alternative if (I)(5) qualification is not met or a decision to elect out is made

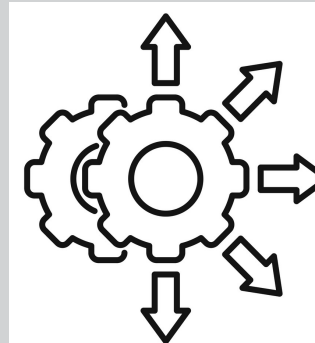
Tax Claims and How to Handle Them



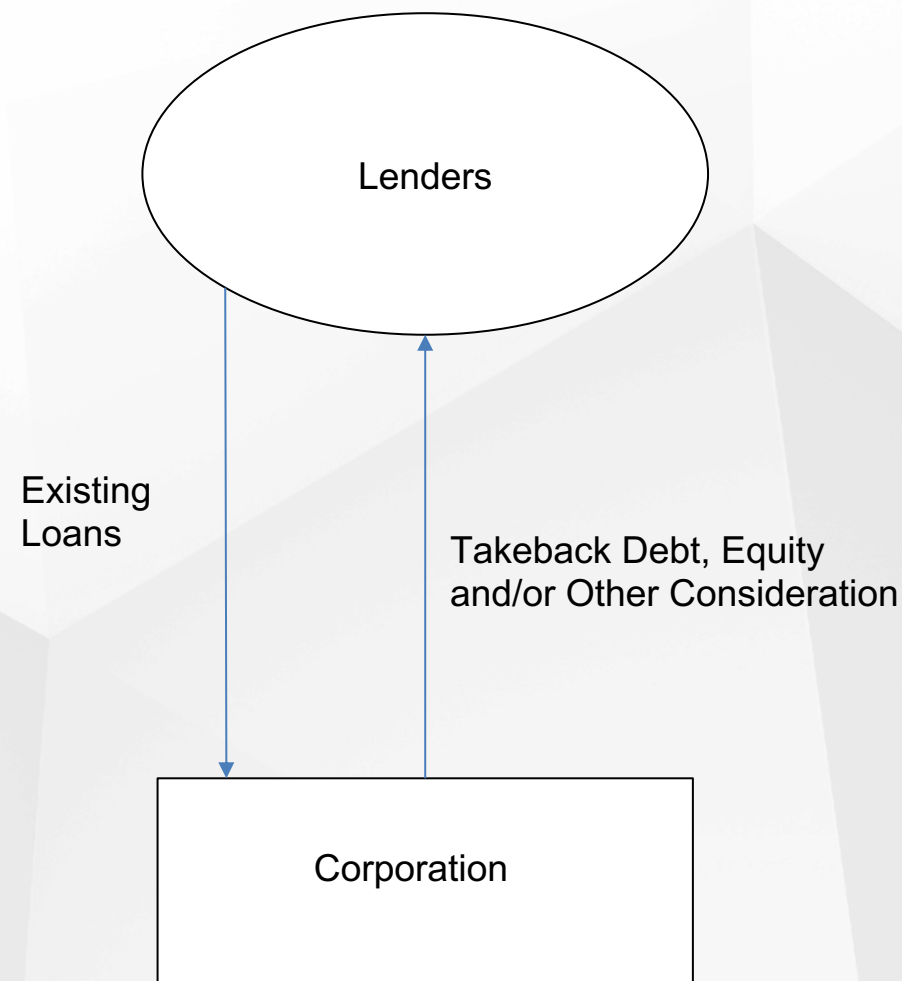
- Pre-Petition v. Post-Petition Claims
 - Assessment date v. due date
- Priority v. Non-Priority Claims
 - Due date of return (including extensions) is after 3 years before the petition date
 - Taxes were assessed within 240 days before the petition date
 - Taxes are assessable, but not yet assessed as of the petition date
- Handling Tax Claims – 3 Options:
 - Pay
 - Object
 - Negotiate

Corporate Structuring Considerations

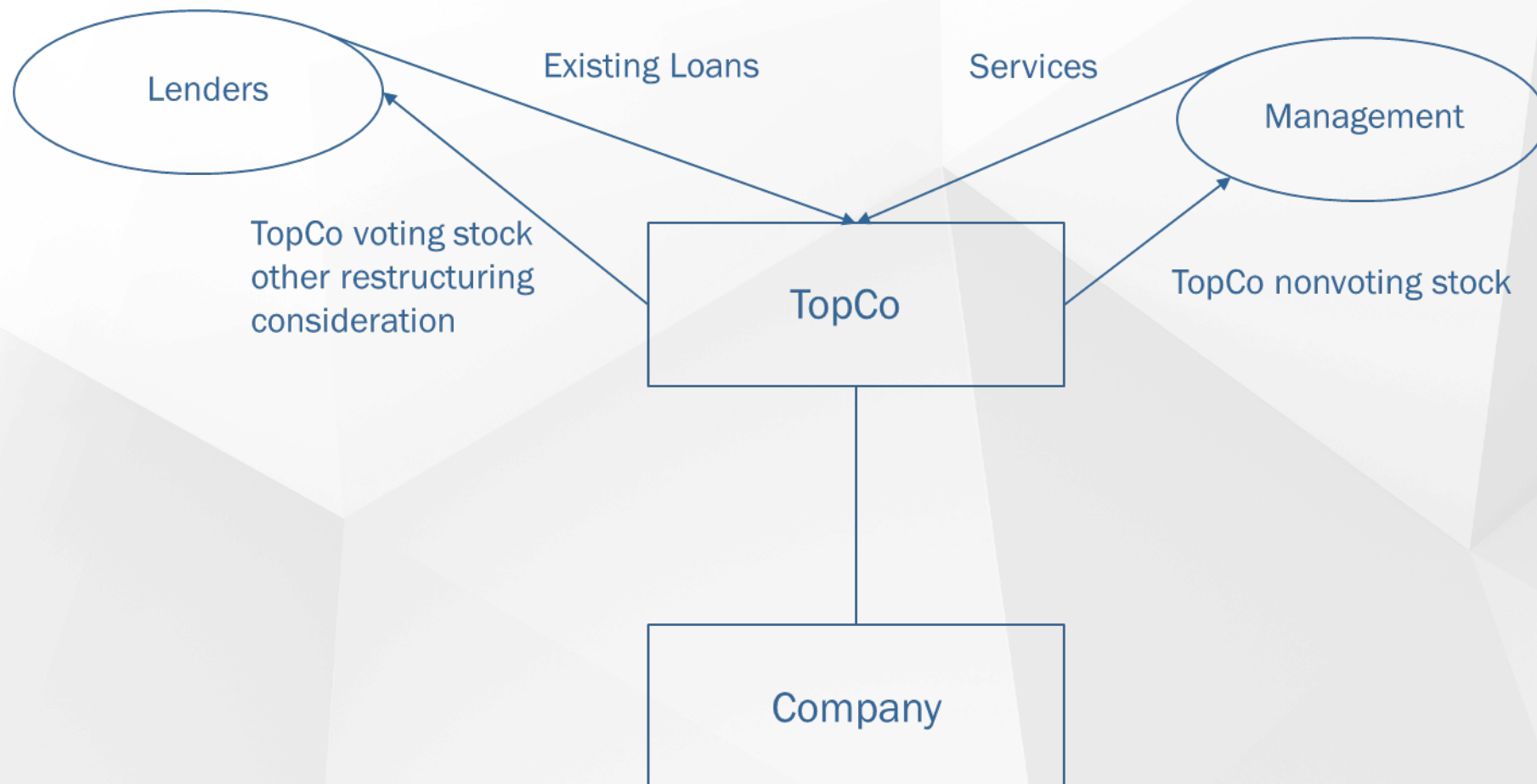
- Three main types of corporate restructuring:
 - Tax-free
 - Taxable for holders
 - Taxable for holders and corporation
- Partnerships raise distinct tax issues that require careful planning



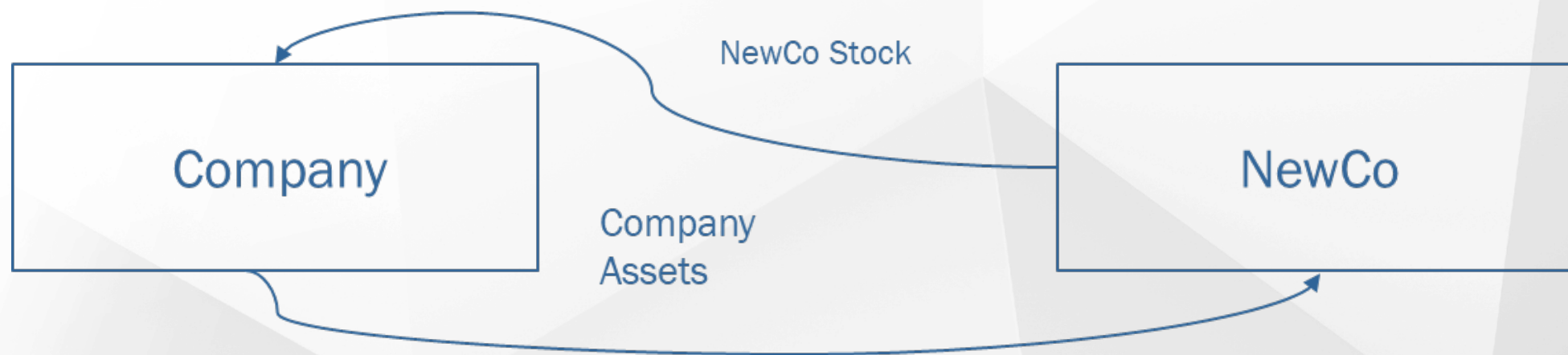
Simplified Tax-Free Restructuring



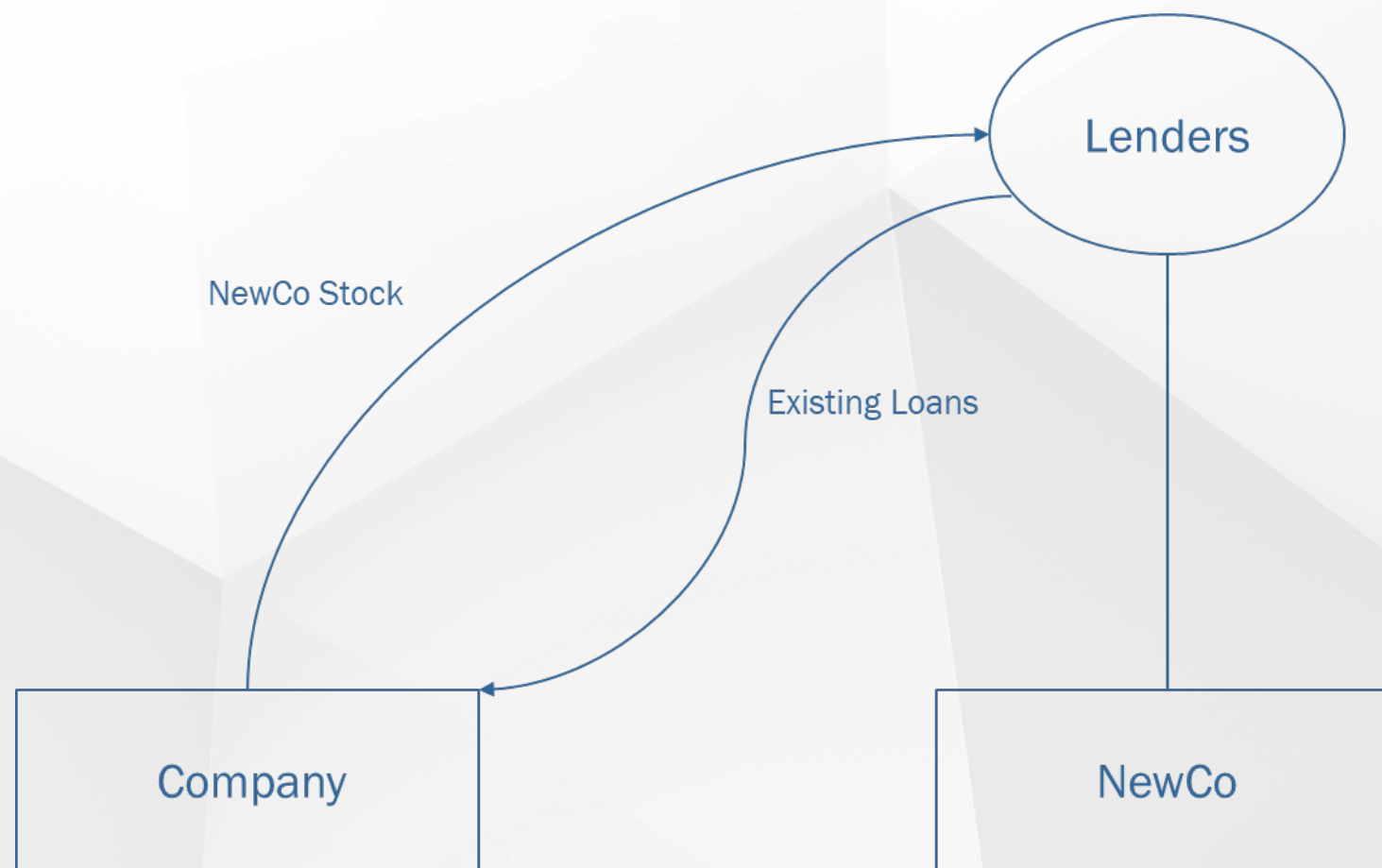
Simplified Taxable Stock Transaction



Simplified Taxable Asset Transaction – Step 1



Simplified Taxable Asset Transaction – Step 2



QUESTIONS & ANSWERS

Contribute questions by using the Q&A feature in the Zoom webinar interface.

Q
&
A

REMINDERS

- The webinar has been recorded, and we will contact you via email when it becomes available.
- We will be publishing a white paper summarizing today's discussion and will notify you once it becomes available.
- We welcome your feedback so we can improve future webinars and web panel discussions.

C O N T A C T



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THANK YOU!



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